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1 UNITED STATES DISTRICT COURT
 2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

16 Cr. 91 (PKC)

5 SCOTT TUCKER and
 6 TIMOTHY MUIR,

Trial

Defendants.

7 -----x

New York, N.Y.
 October 3, 2017
 10:00 a.m.

10 Before:

11 HON. P. KEVIN CASTEL

12 District Judge
 and a jury

13 APPEARANCES

14 JOON H. KIM
 Acting United States Attorney for the
 15 Southern District of New York
 BY: NIKETH V. VELAMMOOR
 16 HAGAN C. SCOTTEN
 SAGAR K. RAVI
 17 Assistant United States Attorneys

18 FREEMAN NOOTER & GINSBERG
 Attorneys for Defendant Tucker

19 BY: LEE A. GINSBERG
 NADJIA LIMANI

20 -and-

STAMPUR & ROTH

21 BY: JAMES M. ROTH

22 BATH & EDMONDS, P.A.
 Attorneys for Defendant Muir

23 BY: THOMAS J. BATH

-and-

24 BEVERLY VAN NESS

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1 (Trial resumed)

2 THE COURT: Please be seated.

3 I have a note: "Can you confirm that DX2700 is
4 received?"

5 This is a request by somebody. Who is it by?

6 THE DEPUTY CLERK: For the record.

7 THE COURT: By my deputy.

8 Is Defendants' Exhibit 2700 in evidence?

9 MR. SCOTTEN: Yes, your Honor.

10 MR. GINSBERG: We all believe it is. This is the
11 exhibit that you had at the end of the day overruled the
12 government's objection, and the following morning I think I
13 began by saying you had made your ruling, and I offered it. I
14 think I offered it or you said it's in evidence, or something
15 like that happened.

16 THE COURT: Defendants' Exhibit 2700 is received into
17 evidence.

18 MR. GINSBERG: Thank you.

19 (Defendants' Exhibit 2700 received in evidence)

20 THE COURT: Bring our jurors in, please.

21 (Continued on next page)

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1 (Jury present)

2 THE COURT: Good morning, ladies and gentlemen.
3 Everyone else, please be seated.

4 Paige Smith, we're going to give you a change of
5 scenery. You can move down to the front row and see what life
6 looks like from the front row. That corner seat is not always
7 the best anyway, so the world looks better, or I hope so.

8 We're ready to begin.

9 The Court reminds you that you are still under oath.

10 DOUGLAS GLENN LANKFORD, resumed.

11 THE WITNESS: Yes, sir.

12 THE COURT: Mr. Ginsberg, whenever you're ready.

13 MR. GINSBERG: Thank you, your Honor.

14 DIRECT EXAMINATION (cont'd)

15 Ha3Wtuc1 Lankford - Direct

16 BY MR. GINSBERG:

17 Q. Good morning.

18 A. Good morning.

19 Q. At the end of the day yesterday, we were talking about the
20 role you played as the IT administrator for the tribe back in
21 2002. Do you recall that?

22 A. Yes, sir.

23 Q. And you told us that at some point, some computers arrived
24 from Kansas City, but you didn't know the purpose for the
25 computers. Is that correct?

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1 A. That's correct.

2 Q. Did there come a time after the computers arrived that some
3 servers arrived on the tribal land?

4 A. There were devices that were brought early, and then very
5 much later, there was some more equipment brought that had --
6 one-use servers that were, I believe were used for the call
7 center that was located on tribal land.

8 Q. Do you recall what year it was, how close in time to the
9 computers coming in?

10 A. It was during the time -- it was after I became second
11 chief, so it would have been 2008, '9, somewhere in there. I'm
12 not really sure when they came.

13 Q. Before the servers came in, were any other additional
14 computers or any other equipment sent in or brought in, that
15 you can recall?

16 A. Not that I know of, just the two boxes that came first.

17 Q. I may have asked you this yesterday, and I apologize. Did
18 you see who used the two computers that were brought in
19 initially?

20 A. No one. They sat in the server room.

21 Q. When you say they sat in the server room, did you have a
22 server there already for the tribe's own purposes?

23 A. Yes, sir.

24 Q. And were you the person to take care of that?

25 A. Our servers, yes.

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1 Q. Now, I'm going to skip ahead to the period when you became
2 second chief. That was approximately 2008, is that correct?

3 A. Yes, sir.

4 Q. And when you became second chief, could you tell us,
5 because of that position, what boards you became a member of?

6 A. I became the chairman of our tax commission. Also became
7 vice chair of the AMG board.

8 Q. Did you become a member of the business committee?

9 A. Yes, sir.

10 Q. And of the regulatory commission?

11 A. Yes, sir.

12 Q. Was the regulatory commission the same as the tax
13 commission?

14 A. Yes, sir.

15 Q. OK. Thank you.

16 So it would be fair to say that beginning in 2008, you
17 began to attend board meetings of all of those groups?

18 A. Yes, sir.

19 Q. And by 2008, before you were elected second chief, did you
20 have an understanding what the computers that had originally
21 come in 2002 and 2008 or so were being used for?

22 A. Not really.

23 Q. Were you aware --

24 THE COURT: I didn't hear the answer.

25 THE WITNESS: Not really, your Honor.

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1 THE COURT: Thank you.

2 BY MR. GINSBERG:

3 Q. Were you aware before you became second chief about the
4 payday lending business?

5 A. I knew the tribe was involved in payday lending.

6 Q. And when did you first become aware of that, the best you
7 can tell us?

8 A. 2000 -- I'm not really sure about, I'm assuming soon after
9 it started.

10 Q. OK. And would that be sometime between 2002 and 2008,
11 prior to you becoming second chief?

12 A. In the '2 closer than the '8, I would think.

13 Q. OK. Thank you.

14 I'm going to go over with you a series of documents. I
15 placed a set of hard copies in front of you, but they're also
16 going to come up on the screen, so whatever's easiest for you
17 to look at, you can do that.

18 I'd like you to look at Defendants' Exhibit 2711 first, and
19 after you have had time to read it, tell us, please.

20 A. I've reviewed it.

21 Q. Looking at the second page of the document, do you
22 recognize any of the signatures on that page?

23 A. I do.

24 Q. And whose signatures do you recognize?

25 A. Myself, Chief Gamble and Secretary-treasurer Sarah Lawson.

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1 Q. And do you recognize what this document is?

2 A. Looks like a licensing agreement.

3 Q. 2711?

4 A. Yes. Or a license arrangement, I guess.

5 Q. Let me just make sure. I'm looking at the screen. You're
6 looking at a piece of paper. Could you look at the screen? I
7 want to make sure you don't have the wrong document.

8 THE COURT: Have you ever seen this document before?

9 THE WITNESS: Well, I've signed it, so I'm assuming
10 I've seen it in the past, your Honor.

11 THE COURT: OK. Do you remember signing it?

12 THE WITNESS: I do not.

13 THE COURT: OK.

14 BY MR. GINSBERG:

15 Q. Taking a look at the top portion of it, if you can't recall
16 what it is, can you tell us if that refreshes your recollection
17 as to what this document is?

18 THE COURT: Now, the concept of refreshing your
19 recollection, you can read something, and you can read it and I
20 can read it and you can see the words on the page. That's not
21 what refreshing the recollection is. It's when you read it and
22 then you put the document facedown, ask yourself, do you have a
23 new and refreshed recollection on the subject? If you do, then
24 it's refreshed your recollection. If it's just a question, "I
25 read the words on the page," then you don't have a refreshed

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1 recollection.

2 A. I'm not sure I know what this pertains to.

3 Q. Well, you recognize your signature, correct?

4 A. I do.

5 Q. And you attended board meetings of AMG Services Inc.,
6 correct?

7 A. Yes, sir.

8 Q. And did you begin attending those board meetings as early
9 as 2008?

10 A. In June of 2008, when I took the office of second chief.

11 Q. So by 2012, you would still have been attending those board
12 meetings, is that correct?

13 A. Yes, sir.

14 Q. And do you recall at the board meetings somebody was taking
15 down notes, the recording secretary would take down notes?

16 A. Yes.

17 Q. And after the meeting was completed, the secretary would
18 type up those notes and then present it to the board at the
19 next meeting?

20 A. Yes, sir.

21 MR. GINSBERG: Your Honor, I offer Defendants' Exhibit
22 2711.

23 THE COURT: Any objection?

24 MR. RAVI: No objection.

25 THE COURT: Received.

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1 (Defendants' Exhibit 2711 received in evidence)

2 BY MR. GINSBERG:

3 Q. Could you now read to us what's on the top of Defendants'
4 Exhibit 2711?

5 A. "AMG Services Inc., minutes of the board of directors
6 special meeting, June 20, 2012, Miami, Oklahoma."

7 Q. Who were the people who were attending that meeting?

8 A. AMG chairman Chief Tom Gamble; AMG vice chairman Second
9 Chief Doug Lankford, AMG secretary-treasurer, Miami tribe
10 Secretary-treasurer Sarah Lawson, AMG CEO and President Don
11 Brady, Scott Tucker.

12 Q. If you would look at Roman VI, please, Roman VI basically
13 says that "Chairman Gamble and AMG CEO and President Don Brady
14 led a discussion of the terms and conditions of the proposed
15 license agreement. Chairman Gamble noted that the Miami tribe
16 business committee had been apprised of the terms of the
17 proposed license agreement by AMG CEO and President Don Brady
18 and Second Chief Doug Lankford. No action was taken." Do you
19 see that?

20 A. I do.

21 Q. As you sit here now, do you recall that taking place?

22 A. I do not.

23 Q. Do you recall discussions taking place about licensing
24 agreements regarding AMG?

25 A. I do recall some.

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1 Q. All right. You can put that aside.

2 Go to Defendants' Exhibit 844, please, and I'd ask you to
3 look at the document, particularly on the second page. Do you
4 recognize the signatures?

5 A. I do.

6 Q. Do you recognize your own signature?

7 A. I do, sir.

8 Q. Chief Gamble?

9 A. Yes, sir.

10 Q. And Sarah Lawson?

11 A. Yes, sir.

12 Q. Do you recognize what this document is?

13 A. Now what was your question, sir?

14 Q. Do you recognize what this document is?

15 A. I do not recall the meeting. I know I was there because
16 I've signed the minutes, but --

17 Q. OK. Quickly, I'll ask you those same questions. You
18 attended meetings of the AMG board during this June 2012 period
19 of time, is that correct?

20 MR. GINSBERG: Your Honor, I'm told there's no
21 objection.

22 THE COURT: All right. Received then.

23 MR. GINSBERG: I offer Defendants' Exhibit D844 into
24 evidence.

25 THE COURT: Any objection?

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1 MR. RAVI: No objection.

2 THE COURT: Received.

3 (Defendants' Exhibit D844 received in evidence)

4 BY MR. GINSBERG:

5 Q. You were present at this meeting, is that correct?

6 A. Yes, sir.

7 Q. Don Brady was present, correct?

8 A. Yes, sir.

9 Q. And Scott Tucker and Blaine Tucker were present, correct?

10 A. Yes, sir.

11 Q. And if we look at Roman VI under old business, it indicates
12 that "Don Brady advised the board that the financial numbers
13 were reviewed by Mr. Brady and MNE Chief Operating Officer Joe
14 Frazier, with satisfactory acceptance of same. Mr. Brady
15 further noted that some of the financial information was
16 related to the Miami tribe business committee subsequent to
17 Mr. Brady's and Mr. Frazier's review." Do you see that?

18 A. I do.

19 Q. And would it be fair to say that at that meeting, based
20 upon these minutes, there was a presentation made by Mr. Brady,
21 who indicated both he and Joe Frazier had reviewed the
22 financial information?

23 MR. RAVI: Objection to leading.

24 THE COURT: Yes. Please avoid it. The document's in
25 evidence.

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1 MR. GINSBERG: Speaks for itself.

2 THE COURT: The jury can read it.

3 MR. GINSBERG: OK.

4 THE COURT: It's up on the screen.

5 MR. GINSBERG: Fine.

6 Q. Now, who is Joe Frazier?

7 A. At what point in time, sir? I'm sorry.

8 Q. At this point I'm talking about where it refers to him as
9 MNE chief operating officer. Could you explain to us who he
10 was and what title he held?

11 A. I know he was a person that did accounting and knew about
12 business, and he worked under Mr. Brady.

13 Q. And do you recall when, about, in time, he began to work
14 either under or with Mr. Brady?

15 A. I don't recall when he was exactly hired.

16 Q. Did there eventually come a time where Joe Frazier played a
17 different role with the tribe?

18 A. He did.

19 Q. And do you recall about how many years later that was?

20 A. It would have been after, after November of 2012.

21 Q. We'll get back to that point.

22 Now we can move to Defendants' Exhibit 2710. I know it's a
23 long document, because there are some attachments, but I would
24 ask you to first look at the signatures on the second page and
25 ask you if you recognize those signatures.

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1 A. I do.

2 Q. And whose signatures are on the second page?

3 A. Gena Lankford, chairperson; Vice Chair Scott Willard;
4 secretary-treasurer Donya Williams.

5 Q. And who is Gena Lankford?

6 A. She is my wife.

7 Q. And what was her role at the time in relation to the MNE
8 Services board or committee?

9 A. Her previous -- before she became my wife, she's been HR at
10 MNE, and she has been on the MNE board pre -- or she was on
11 this MNE -- MNES board previous to our marriage.

12 Q. And at some time did she become chairperson?

13 A. Yes.

14 Q. Do you recall exactly when that was?

15 A. I do not.

16 Q. I'd ask you to look at the last two pages of this document.
17 On the bottom there's a number ending in 084 and 085.

18 A. Is it on --

19 Q. We can put it up there now.

20 A. Yeah, I'll just deal with that; that way I make sure I get
21 the right page.

22 I've read it.

23 Q. Do you recognize the signature at the bottom of the page?

24 A. I do.

25 Q. And whose signature is that?

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1 A. Gena Lankford.

2 Q. And do you recognize what this document is?

3 A. Not per se. It looks like they're rescinding something.

4 Q. From time to time, did the various committees of the board
5 of directors pass various resolutions?

6 A. They would.

7 Q. And it would be presented to the board for a vote, is that
8 correct?

9 A. That's correct.

10 Q. And the board would have to vote on it, is that correct?

11 A. That is correct.

12 Q. And that would be true of MNE Services as well as AMG or
13 tribal council, is that correct?

14 A. That would be correct.

15 Q. And after the resolutions were acted upon, there would be a
16 document prepared to reflect the resolution, is that correct?

17 A. Yes, sir.

18 Q. And then it would be signed by the chairperson of that
19 particular committee, is that correct?

20 A. Yes, sir.

21 Q. Let me just go through that. 085, do you recognize those
22 two signatures?

23 A. I do. Scott Willard and Donya Williams.

24 Q. And those signatures relate to the page before, the
25 resolution page, correct?

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1 A. I assume so, sir, yes.

2 THE COURT: You have to keep your voice up.

3 THE WITNESS: Yes.

4 THE COURT: No, no. Say what you said again, if you
5 don't mind.

6 THE WITNESS: Oh, sorry. I forgot what the question
7 was.

8 THE COURT: OK.

9 BY MR. GINSBERG:

10 Q. I think the answer was "I assume so."

11 A. Yes, sir. I recognize those two signatures as Scott
12 Willard and Donya Williams, and I understand that to be part of
13 the second page.

14 Q. Thank you.

15 And the same question as to the documents ending on the
16 bottom right in 086 and 087, do you recognize the signatures?

17 A. Yes, sir.

18 Q. And again, whose signature is on 086?

19 A. Gena Lankford.

20 Q. And 087?

21 A. Scott Willard and Donya Williams.

22 Q. Looking back at the first page of D2710, you told us before
23 that the minutes of the board of directors meetings were
24 recorded and then later typed up and presented to the board for
25 approval at the next meeting. Is that correct?

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1 A. Yes, sir. That's usually how it happened.

2 Q. And one of the people present at this particular meeting
3 was the recording secretary, Carolyn Williams, is that correct?

4 A. Yes, sir.

5 MR. RAVI: Objection, your Honor. I don't believe a
6 foundation has been laid that Mr. Lankford served on this board
7 or was present at this meeting.

8 MR. GINSBERG: I didn't ask that question.

9 THE COURT: Rephrase your question, please.

10 BY MR. GINSBERG:

11 Q. The last question simply was, was Carolyn Williams present
12 at this meeting?

13 THE COURT: If you know. Do you know whether she was
14 there? You can look at a piece of paper. The piece of paper
15 can refresh your recollection or it may not refresh your
16 recollection.

17 THE WITNESS: I don't, I can't say one way or the
18 other, because I don't think I was there, so I can't attest
19 that Carolyn Williams was there, your Honor.

20 THE COURT: OK. That's fine.

21 MR. GINSBERG: Your Honor, I'd offer Defendants'
22 Exhibit D2710.

23 THE COURT: Any objection?

24 MR. RAVI: Yes, your Honor.

25 THE COURT: Basis.

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1 MR. RAVI: Foundation. I can ask a couple questions
2 of the witness, but I don't believe the witness established
3 that he was a member of this board or as to his basis for any
4 knowledge as to the practices of this board and the way that
5 the meetings were recorded.

6 THE COURT: Go ahead, Mr. Ginsberg. If you'd like to
7 try to lay a foundation, you're welcome to do that, or you may
8 want to do this through another witness.

9 BY MR. GINSBERG:

10 Q. Are you aware -- were you on the MNE Services board at any
11 time?

12 A. No, sir.

13 Q. Were you aware of what the MNE Services board was?

14 A. I think so, sir.

15 Q. And were you aware of that in your capacity as the second
16 chief of the tribe?

17 A. Yes, sir.

18 Q. And what was the MNE Services board's purpose?

19 A. They were the managing board of the MNE Services business
20 portion of the lending company.

21 Q. And who would that board report to in terms of whatever
22 work they were doing or things that they were acting on?

23 A. Most of their interactions came from Mr. Brady.

24 Q. And would their actions be eventually reported to the
25 tribal council as well?

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1 A. Usually.

2 Q. And was that the practice of the MNE Services board and the
3 tribal council during 2012?

4 A. Yes, sir. I would say so.

5 MR. GINSBERG: I reoffer Defendants' Exhibit D2710,
6 your Honor.

7 MR. RAVI: Your Honor, may I ask a question of the
8 witness?

9 THE COURT: Sure.

10 VOIR DIRE EXAMINATION

11 BY MR. RAVI:

12 Q. Mr. Lankford, what you just testified to regarding the MNE
13 board, was that based on personal knowledge or what other
14 people have told you?

15 A. I think it would maybe be personal, just because I knew
16 that they -- usually if there was a meeting, my wife might
17 mention that they had a meeting that day. Somewhat personal.

18 Q. So it was based on things that your wife told you, correct?

19 A. Yes.

20 Q. Not based on the fact that you were present at the meeting
21 and observed --

22 A. No, sir. I did not attend their meeting.

23 MR. RAVI: Objection. Foundation, your Honor.

24 THE COURT: Sustained.

25 MR. GINSBERG: I don't want to make a long speaking

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1 objection, your Honor. Can I quickly approach the sidebar?

2 THE COURT: You can do it at the next break.

3 MR. GINSBERG: OK. I'll put this aside.

4 BY MR. GINSBERG:

5 Q. I'd ask you to look at Defendants' Exhibit 2714,
6 particularly the third page. Do you recognize the signatures
7 on the third page?

8 A. I do.

9 Q. Whose signatures are those?

10 A. Gena Lankford, Scott Willard and Donya Williams.

11 Q. Do you recognize what this document is?

12 A. I've reviewed it.

13 Q. Do you recognize what it is?

14 A. It looks like a regular meeting of the MNES board.

15 Q. Were you present at this meeting?

16 A. I don't believe I was, sir.

17 Q. Now, as the second chief of the tribe, would you receive
18 information about the work of the MNE Services board through
19 either your presence on any of the other boards or your role as
20 the second chief of the tribe?

21 A. Sometimes as second chief.

22 Q. And how would that occur; how would you receive the
23 information as the second chief?

24 A. Usually it would be at a meeting of the council and one or
25 the other of the Scott Willard or Donya Williams might bring up

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1 something that happened or that we needed to be advised of.

2 Q. So from time to time, they would advise you about things
3 that the MNE Services board was discussing, is that correct?

4 A. Sometimes.

5 Q. And it's also true that you were not present or regularly
6 present at the MNE Services board meetings, correct?

7 A. I was not.

8 Q. And then very quickly, 2717, D2717, if you'd look at the
9 scone page, without reading the whole document, do you
10 recognize the signatures?

11 A. I do.

12 Q. And whose signatures are they?

13 A. Gena Lankford, Scott Willard and Donya Williams.

14 Q. And is this another meeting that you did not attend?

15 A. I don't believe I did.

16 Q. And D2719, do you recognize the signatures on the second
17 page?

18 A. Yes, sir.

19 Q. And whose signatures are they?

20 A. Gena Lankford, Scott Willard and Donya Williams.

21 Q. Again, this is another meeting of MNE Services, a board
22 that you did not attend, correct?

23 A. That's correct.

24 Q. Now let's go to Defendants' Exhibit D2718A. I would ask
25 you to look at the second page of this document and ask if you

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1 recognize the signatures.

2 A. I do. Chief Gamble, myself and Sarah Lawson.

3 Q. And do you recognize what this document is?

4 A. I've read the document, sir.

5 Q. Do you recognize what it is?

6 A. I think so, sir.

7 Q. What is it?

8 A. I believe there was some money being transferred to the
9 tribe for the building of one of its casinos.

10 Q. Before you tell us what's in the document, what type of
11 document is this?

12 A. It's a board meeting of AMG Services.

13 Q. Are these the minutes of that board meeting?

14 A. I believe so, sir.

15 Q. And is this a meeting that you attended?

16 A. I believe so, yes.

17 Q. And you signed it?

18 A. I did.

19 MR. GINSBERG: I'd offer D2718A.

20 THE COURT: Any objection?

21 MR. RAVI: No objection.

22 THE COURT: Received.

23 (Defendants' Exhibit D2718A received in evidence)

24 BY MR. GINSBERG:

25 Q. Now, you were about to explain something that took place at

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1 the meeting. Could you go ahead with your explanation of that?

2 A. Oh, I'm sorry. It just, it appears to be just where some
3 money was transferred to the tribe for the building of its
4 casino.

5 Q. And in addition, under Roman II, in the second paragraph,
6 does it talk about Mr. Brady?

7 A. It does.

8 Q. And what does it say about Mr. Brady?

9 A. It says that CEO AMG President Don Brady advised the board
10 MNE has agreed again to provide 2.5 million to the tribe's
11 operating budget.

12 Q. And the paragraph beneath that?

13 A. Mr. Brady reported to the board that AMG operations people
14 have approved an expansion of the loan-process employees in the
15 Miami office.

16 Q. And it goes on to talk about the plans for that, is that
17 correct?

18 A. That's correct.

19 Q. And it goes on to say that Carolyn Williams was going to
20 head up the expanded operations, correct?

21 A. It does.

22 Q. And the next paragraph references AMG and the operations
23 and the costs of those operations as well, correct?

24 A. Yes, sir.

25 Q. Now, did there come a time in or about November of 2012

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1 where Joe Frazier was appointed to a new position with MNE
2 Services?

3 A. Yes, sir.

4 Q. And what position was he appointed to?

5 A. CEO.

6 Q. And did he replace somebody else in that position?

7 A. He did.

8 Q. And who did he replace?

9 A. Don Brady.

10 Q. In order to do that, was it required that a resolution of
11 the board of directors of MNE pass upon that?

12 A. Yes, sir.

13 Q. I'd ask you to look at D853 and look at the signatures on
14 the bottom of that page and tell us if you recognize the
15 signatures.

16 A. Gena Lankford, Scott Willard and Donya Williams.

17 MR. GINSBERG: I'd offer Defendants' Exhibit D853,
18 your Honor.

19 THE COURT: Any objection?

20 MR. RAVI: No objection, as long as it's being offered
21 not for its truth.

22 THE COURT: All right. It's received.

23 (Defendants' Exhibit D853 received in evidence)

24 THE COURT: As I told you, ladies and gentlemen, with
25 resolutions, with "whereas" clauses, they're not admitted for

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1 the truth of their content. Anybody can put anything in a
2 "whereas" clause. It doesn't make it a fact, a proven fact, or
3 it doesn't even tend to prove the fact. The exhibit is being
4 received because the resolution is an operative act, somebody's
5 action, and it's received for that purpose and because it may
6 have influenced the conduct of others.

7 Go ahead.

8 MR. GINSBERG: Thank you, your Honor.

9 Q. As you testified before, was it a fact that Don Brady was
10 removed as president of the company?

11 A. It was.

12 Q. And was it a fact that Joe Frazier replaced Don Brady?

13 A. It is.

14 Q. And was it a fact that the board of directors approved
15 those actions?

16 THE WITNESS: Your Honor, some of this is getting into
17 confidential meetings with lawyers, how this action came to be.
18 I just, I need to say that.

19 THE COURT: All right.

20 MR. GINSBERG: So the question --

21 THE COURT: Excuse me a second, sir.

22 MR. GINSBERG: Sure.

23 THE COURT: You need not reveal the content of any
24 confidential communication between you or the tribe and the
25 tribe's lawyer for the purpose of seeking or obtaining legal

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1 advice. But for example, you might talk to a lawyer about
2 whether you should engage in a particular transaction or do
3 something. Now, the conversation with the lawyer may be
4 privileged, but what you ultimately decide to do is not
5 privileged. All right?

6 THE WITNESS: Yes, sir. I just wanted --

7 THE COURT: Does that help at all?

8 THE WITNESS: Well, I'm just nervous about that.

9 THE COURT: OK.

10 THE WITNESS: In case I pause a lot to answer, I want
11 you to know why.

12 THE COURT: Fair enough.

13 Put your question, Mr. Ginsberg.

14 MR. GINSBERG: I'll put the question again.

15 Q. Was it a fact that the board of directors of MNE Services
16 approved the removal of Don Brady and Joe Frazier?

17 A. There was a removal of Don.

18 Q. And the appointment of Joe Frazier?

19 A. Yes, sir.

20 MR. GINSBERG: I'm going to go to D854, your Honor.

21 Q. Asking you to look at the second page, do you recognize the
22 signatures on that page?

23 A. I do.

24 Q. Whose signatures are they?

25 A. Gena Lankford, Scott Willard and Donya Williams.

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1 Q. And looking at this document, what does it appear to be?

2 A. Like a resolution of the MNES, for MNE Services Inc. board.

3 MR. GINSBERG: Your Honor, I'd offer Defendants'
4 Exhibit D854.

5 THE COURT: Any objection?

6 MR. RAVI: No objection, again, not for the truth.

7 THE COURT: The same instruction applies here, ladies
8 and gentlemen.

9 Received.

10 (Defendants' Exhibit D854 received in evidence)

11 BY MR. GINSBERG:

12 Q. This resolution, in the fourth paragraph, where it says
13 "whereas," do you see where it says, "The board finds it is in
14 the best interests of the company to remove Don Brady, Blaine
15 Tucker and Scott Tucker as signatories"?

16 A. I do.

17 Q. "From all company bank accounts," do you see that?

18 A. I do.

19 Q. And the paragraph underneath indicates those individuals
20 should have no wire authority as well, correct?

21 A. That's correct.

22 Q. And underneath that it indicates it's in the best interests
23 to appoint Joe Frazier as a signatory?

24 A. I see that, yes.

25 Q. And then it specifies certain accounts underneath it, on

Ha3Wtuc1

1 the bottom, is that correct?

2 A. It does.

3 Q. And to the best of your recollection, from 2012, did Joe
4 Frazier become a signatory on the bank accounts?

5 A. I think so, but I'm -- I can't -- I believe so, sir.

6 Q. OK. And do you recall Don Brady and Blaine and Scott
7 Tucker being removed from the bank accounts at that time?

8 A. Yes, sir.

9 Q. Let's go to Defendants' Exhibit D855, second page. I ask
10 you again if you recognize the signatures.

11 A. I do.

12 Q. And whose signatures are they?

13 A. Gena Lankford, Scott Willard and Donya Williams.

14 Q. And what does this document appear to be?

15 A. Resolution of the board of directors MNE Services Inc.

16 MR. GINSBERG: I'd offer D855, your Honor.

17 THE COURT: Any objection?

18 MR. RAVI: No objection, again, not for its truth.

19 THE COURT: All right. It's subject to the same
20 instruction I've given, and with that understanding it's
21 received.

22 (Defendants' Exhibit D855 received in evidence)

23 BY MR. GINSBERG:

24 Q. If you can read underneath where it says resolution of the
25 board of directors of MNE Services, could you read the next

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1 line?

2 A. You mean the first "whereas"?

3 Q. No. Before that, "demanding."

4 A. "Demanding the return of MNE Services Inc. funds held at
5 multiple law offices."

6 Q. And the fourth "whereas" paragraph?

7 A. "During the special meeting on the 16th of November 2012,
8 the board of directors was informed that, on or about May 2,
9 2012, significant moneys were transferred from company bank
10 accounts to various law firms, including McDowell Rice Smith &
11 Buchanan, the Muir Law Firm LLC and" -- I don't know how to say
12 that.

13 Q. Berkowitz.

14 A. "Berkowitz, Oliver, Williams, Shaw" --

15 Q. Eisenbrandt.

16 A. "Eisenbrandt, and" --

17 Q. And?

18 A. "And, whereas the board of directors finds it in the best
19 interests of the company for those amounts to be returned to
20 the company."

21 Q. And then could you read under that?

22 A. "Now therefore, be it resolved"?

23 Q. Yes.

24 A. "That the following amounts shall be returned to the
25 company immediately from McDowell Rice Smith & Buchanan, 21

Ha3Wtuc1

1 million; from the Muir Law Firm LLC, 7 million; from Berkowitz,
2 Oliver, Williams, Shaw & -- 8 million."

3 Q. Eisenbrandt. OK.

4 Now, in November 2012, what positions did you hold in
5 relation to the Miami Tribe of Oklahoma?

6 A. I was still second chief and vice chairman.

7 Q. Were you aware that significant amounts of money had been
8 transferred from tribal accounts to various law firms?

9 A. Can you rephrase that?

10 Q. Were you aware that significant amounts of money, prior to
11 the date of this resolution, November 16, 2012, had been
12 transferred from tribal accounts to various law firms?

13 A. I don't know that I was aware of that.

14 Q. Were you aware that the MNE Services board resolved that
15 those moneys should be transferred back to the tribal accounts?

16 A. I think I was aware that, at a point in time that those
17 moneys were starting to be transferred back.

18 Q. Now, the moneys that were transferred back was money that
19 was transferred back to the tribe, is that correct?

20 A. I believe they came to MNE.

21 Q. And that's a tribal --

22 A. Entity.

23 Q. -- entity, correct?

24 A. That's correct.

25 Q. And the moneys on this page, the total would be \$36

Ha3Wtuc1

1 million, if we total 21, 7, and 8?

2 A. I believe so.

3 Q. And that was money that -- that was the tribe's money,
4 correct?

5 A. I believe so.

6 Q. And do you know how the tribe had earned that money?

7 A. I believe that money came from the online lending business.

8 (Continued on next page)

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HA38TUC2

Lankford - Direct

1 BY MR. GINSBERG:

2 Q. I am going to move to Defendants' D856.

3 In D856, do you recognize the signatures on the bottom?

4 A. I do.

5 Q. Whose signatures are they?

6 A. Gena Lankford, Scott Willard and Donya Williams.

7 Q. What does this document D856 appear to be?

8 A. A resolution of that board, MNE Services, Inc.

9 MR. GINSBERG: I would offer Defendants' Exhibit D856.

10 THE COURT: Any objection?

11 MR. RAVI: No objection.

12 THE COURT: Received with the same instruction.

13 (Defendants' Exhibit D856 received in evidence)

14 BY MR. GINSBERG:

15 Q. Is it a fact that at some point in around November of 2012,
16 that Don Brady, Blaine Tucker and Scott Tucker no longer had
17 wire authority for the company?

18 MR. RAVI: Objection to leading.

19 THE COURT: Avoid the leading. Start over again.

20 Q. Could you please read the "whereas" paragraph.

21 A. "Whereas, the board of directors also finds it is in the
22 best interests of the company to order that Don Brady, Blaine
23 Tucker and Scott Tucker have no wire authority for the company,
24 and no authority to draw on any lines of the company's lines of
25 credit."

HA38TUC2

Lankford - Direct

1 Q. Is it fair to say there is additional language in there
2 regarding --

3 MR. RAVI: Objection, your Honor. This appears to be
4 used for its truth, the "whereas" clause.

5 THE COURT: Ladies and gentlemen, as I have instructed
6 you, the statements in the "whereas" clause are not admitted to
7 prove the truth of the statements in the whereas clauses. They
8 were just simply said. That's all.

9 Q. To the best of your recollection, was Don Brady, Blaine
10 Tucker and Scott Tucker, were they removed from having wire
11 authority for the company?

12 A. As far as I know, yes.

13 Q. And removed as signatories. Were Don Brady and Blaine
14 Tucker removed as signatories, to best of your knowledge, were
15 they removed as signatories on the bank accounts?

16 A. I believe so, yes.

17 Q. Was that at the direction of the MNE Services board of
18 directors?

19 A. It was.

20 Q. I would ask you to look at D857.

21 Do you recognize the signatures on the bottom?

22 A. I do.

23 Q. Whose signatures are they?

24 A. Gena Lankford, Scott Willard and Donya Williams.

25 Q. What does this document appear to be?

HA38TUC2

Lankford - Direct

1 A. A resolution from MNE Services.

2 MR. GINSBERG: I would offer D857 into evidence.

3 MR. RAVI: No objection. Again, not for its truth.

4 THE COURT: Same instruction applies.

5 (Defendants' Exhibit D857 received in evidence)

6 BY MR. GINSBERG:

7 Q. I would ask you to look at the fourth "whereas" paragraph
8 and read it to us, please.

9 A. "The board of directors finds it in the best interests of
10 the company to remove Don Brady as president of the company."

11 Q. Then the next paragraph.

12 A. "Don Brady is removed as president of MNE Services, Inc.,
13 effective immediately. Approved and executed by a majority of
14 the board of directors of MNE Services, Inc. on the 16th day of
15 November 2012."

16 Q. Without reference to that document, on or about November
17 16, 2012, was Don Brady formally and officially removed as
18 president by the MNE Services board?

19 A. I believe so, yes.

20 Q. I would ask you to look at D2729, please.

21 First, I would ask you to look at page 3, the signature
22 page.

23 Do you have it in front of you?

24 A. Which?

25 Q. D2729.

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Lankford - Direct

1 A. I have it.

2 I recognize these signatures.

3 Q. Whose signatures are they?

4 A. Tom Gamble, myself, and Sarah Lawson.

5 Q. What does this document appear to be?

6 A. A board meeting of AMG Services, Inc.

7 Q. Were you present for this board meeting?

8 A. I believe I was.

9 MR. GINSBERG: I would offer Defendants' Exhibit
10 D2729.

11 THE COURT: Any objection?

12 MR. RAVI: No objection.

13 THE COURT: Received.

14 (Defendants' Exhibit D2729 received in evidence)

15 BY MR. GINSBERG:

16 Q. Mindful of the fact that on the top portion it indicates
17 apparently that there were three lawyers telephonically at this
18 meeting, I am going to ask you questions so you can be careful
19 of not talking about anything that was discussed with them.
20 OK.

21 In Roman numeral III, it talks about new business. Is that
22 correct?

23 A. It looks like it does.

24 Q. It says that Chairman Gamble advised MNES CEO Joe Frazier
25 and Miami tribe CFO Bill Chase of the board's decision-making

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Lankford - Direct

1 process for dedication of certain loan company revenues for
2 tribal initiatives, and directed Mr. Frazier and Mr. Chase to
3 advise the board of the status of such dedicated accounts, and
4 of funds required to complete projects."

5 Do you see that?

6 A. I do.

7 Q. Do you recall discussions in or about November 2012 where
8 Chairman Gamble and Joe Frazier did in fact discuss the
9 dedication or use of certain loan company revenues for tribal
10 purposes?

11 A. I believe I recall some of those.

12 Q. Further, do you recall them both being directed to advise
13 the board of the status of the dedicated accounts?

14 A. Yes, sir.

15 Q. Does that indicate to you, when it says to advise the
16 board, that they were being told to report back to the board as
17 to how the funds were going to be used?

18 A. Yes, sir.

19 Q. Do you recall funds which were the proceeds of the loan
20 business being used for certain tribal purposes?

21 A. Yes, sir.

22 Q. What purposes were they used for?

23 A. According to this document?

24 Q. According to your recollection.

25 A. For various different things, like elder benefit,

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Lankford - Direct

1 scholarships, back-to-school funds, language revitalization and
2 things to do with cultural revitalization efforts.

3 Q. Move to D864.

4 Do you recognize the signatures on the bottom of this
5 document?

6 A. I do.

7 Q. Whose signatures are those?

8 A. Tom Gamble, myself, and Sarah Lawson.

9 Q. What does this document appear to be?

10 A. A resolution of the board of directors of AMG Services,
11 Inc.

12 MR. GINSBERG: I would offer D864 in evidence.

13 MR. RAVI: No objection. Not for its truth.

14 THE COURT: Received.

15 (Defendants' Exhibit D864 received in evidence)

16 THE COURT: Same instruction.

17 BY MR. GINSBERG:

18 Q. Look at the fourth "whereas" paragraph.

19 "The board finds it is in the best interests of the company
20 to remove Don Brady as a signatory from all company bank
21 accounts."

22 Is that what it says on the document?

23 A. Yes.

24 THE COURT: Ladies and gentlemen, that's not for the
25 truth of its content.

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Lankford - Direct

1 Go ahead. Next question.

2 Q. Let me ask you this. Did the board in fact remove Don
3 Brady as signatory on the bank accounts?

4 A. I know that Don was removed from bank accounts.

5 Q. And you know that separate and apart from this resolution,
6 is that correct?

7 A. Yes, sir.

8 Q. In fact, he was terminated, his services were terminated,
9 correct?

10 A. Yes, sir.

11 Q. I am going to ask you to look at D2738A.

12 I would ask you to look at the third page, the signature
13 page. It may be out of order.

14 A. I will just refer to the screen.

15 Q. Thank you.

16 A. I recognize the names.

17 Q. Whose signatures do you recognize?

18 A. Tom Gamble, myself, and Sarah Lawson.

19 Q. What does this document appear to be?

20 A. AMG Services, Inc., minutes of the board of directors'
21 meeting.

22 Q. When did it take place?

23 A. January 24, 2013.

24 Q. Who was present at the meeting?

25 A. Chief Gamble, myself, Sarah Lawson, interim CEO president

HA38TUC2

Lankford - Direct

1 Joe Frazier, and recording secretary Carolyn Williams.

2 Q. Don Brady was no longer present at the meetings of this
3 board, is that correct?

4 A. That's correct.

5 Q. Was that because his services had been terminated?

6 A. Yes, sir.

7 Q. I would ask you to look at Roman numeral III, CEO report.

8 Is it fair to say, in summary, that says that interim CEO
9 Joe Frazier --

10 MR. RAVI: This document is not in evidence, your
11 Honor.

12 MR. GINSBERG: I would offer D2738A in evidence.

13 THE COURT: Any objection?

14 MR. RAVI: No objection.

15 THE COURT: Received.

16 (Defendants' Exhibit D2738A received in evidence)

17 BY MR. GINSBERG:

18 Q. Is it fair to say that Roman numeral III indicates, in
19 summary, that interim CEO Joe Frazier advised the board that he
20 continued to maintain full visibility of all MNES and AMG
21 operating accounts with Bay Cities Bank?

22 A. Yes, sir.

23 Q. And he reported the balances on the accounts?

24 A. Yes, sir.

25 Q. And he advised that Don Brady had been removed as a

HA38TUC2

Lankford - Direct

1 signatory?

2 A. Yes, sir.

3 Q. I would ask you to go to Defendants' Exhibit 2748A. It may
4 be out of order.

5 A. 2748?

6 Q. 2748A.

7 Do you have that?

8 A. I believe so.

9 Q. Do you recognize the signatures on the second page?

10 A. I do.

11 Q. Whose signatures are on that page?

12 A. Chief Gamble, myself, Sarah Lawson, Gena Lankford, Scott
13 Willard and Donya Williams.

14 Q. For the first three signatures, who was Tom Gamble,
15 yourself and secretary-treasurer Lawson signing for, what
16 business?

17 A. AMG Services, Inc.

18 Q. Ms. Lankford, Mr. Willard and Ms. Williams, who were they
19 signing for?

20 A. MNE Services, Inc.

21 Q. What do you recognize this document to be?

22 A. It's the minutes of a special joint meeting of the two
23 boards.

24 Q. Were there frequent joint meetings of the two boards?

25 A. Not very often, but yes.

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Lankford - Direct

1 MR. GINSBERG: Your Honor, I would offer D2748A into
2 evidence.

3 MR. RAVI: No objection.

4 THE COURT: Received.

5 (Defendants' Exhibit D2748A received in evidence)

6 BY MR. GINSBERG:

7 Q. I would ask you to look at Roman numeral II under "new
8 business."

9 Under (a), you see where it talks about Bay Cities Bank?

10 A. I do.

11 Q. Do you recall what Bay Cities Bank had indicated, if
12 anything, to the tribe about the amount of money that Bay
13 Cities Bank had in the account and what they wanted the tribe
14 to do about it?

15 A. I think they were trying to liquidate some of the funds.

16 Q. Whose funds were they?

17 A. The loan company's funds.

18 Q. Did they belong to the tribe?

19 A. I believe so, yes.

20 Q. In this paragraph it talks about \$10 million, correct?

21 A. Yes, sir.

22 Q. Then the following paragraph (b) talks about, as a result
23 of this liquidation, what might take place is that fair to say?

24 A. Yes, sir.

25 Q. And it says, "The foregoing requirement would place

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Lankford - Direct

1 increased administration pressures on the Kansas City operation
2 and will require frequent transfer of funds in and out of the
3 operating accounts to maintain lending operations." Correct?

4 A. Yes, sir.

5 Q. Then on the next page, at the end of Roman numeral II, the
6 last paragraph, it discusses a -- Mr. Frazier advised that he
7 had authorized the final payment of \$29 million to BA Services
8 for outstanding fees owed for 2012.

9 Do you see that?

10 A. I do.

11 Q. Do you know what that payment was for?

12 A. I believe it was for use of software.

13 Q. It was use of software owned by someone else?

14 A. Scott Tucker.

15 Q. Was the tribe paying for use of that software over a period
16 of time?

17 A. We paid for use, yes.

18 Q. Was that one of the services that Scott Tucker or his
19 company provided to the tribe?

20 MR. RAVI: Objection to leading.

21 THE COURT: Avoid leading, please.

22 Q. Had Scott Tucker or one of his companies provided services
23 to the tribe in terms of the payday lending business?

24 A. Yes.

25 Q. Was one of those services software use?

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Lankford - Direct

1 A. Yes.

2 Q. Was BA Services, to the best of your knowledge, an entity
3 that had software that was provided to the tribe?

4 MR. RAVI: Objection.

5 THE COURT: Basis.

6 MR. RAVI: Leading.

7 THE COURT: OK. Mr. Ginsberg, please avoid leading.

8 Q. What did BA Services provide to the tribe?

9 A. They provided software for the lending company.

10 Q. I am going to ask you to look at Defendants' Exhibit D877.

11 Do you recognize what this document is?

12 A. I'm not sure what it is, sir. It looks like a banking
13 document.

14 Q. You have never seen this before?

15 A. I have not, that I recall.

16 Q. Do you recognize on the third page of the document, where
17 there are some signatures underneath the Roman numeral V?

18 A. Yes, sir.

19 Q. Do you recognize the signature on the top line?

20 A. Joe Frazier.

21 Q. Do you recognize the name of the person who notarized the
22 document?

23 A. Gena Lankford.

24 Q. Without reference to this document, do you recall a time in
25 or about March 2013 where Blaine Tucker was given trading

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Lankford - Direct

1 authorization or power of attorney to act on behalf of the
2 tribe?

3 A. I don't recall that.

4 Q. As of March 2013, what were your positions with the tribe?

5 A. I believe I was still second chief.

6 Q. You simply don't recall that?

7 A. I do not.

8 Q. Do you know who Gary Patton is?

9 A. I know his name.

10 Q. Beyond knowing his name, do you know who he is?

11 A. I know he worked at the Kansas City office at the loan
12 company.

13 Q. Do you know if he was ever given authorization by the
14 tribe, by Joe Frazier, trading authorization and power of
15 attorney on behalf of the tribe in March of 2013?

16 MR. RAVI: Objection. Foundation and leading.

17 MR. GINSBERG: I am just asking if he knows.

18 THE COURT: Sustained.

19 Rephrase it.

20 Q. Do you know who, if anyone, was given trading authorization
21 and power of attorney by Joe Frazier on behalf of the tribe in
22 March of 2013?

23 A. I do not know.

24 MR. GINSBERG: One second, your Honor.

25 Q. I ask you to look at Defendants' Exhibit D882, please.

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Lankford - Direct

1 A. 882?

2 Q. 882.

3 Do you recognize the signatures on the bottom of that page?

4 A. I do. Gena Lankford, Scott Willard and Donya Williams.

5 Q. Do you recognize what this document is?

6 A. A resolution of the board of directors of MNE Services,
7 Inc.

8 MR. GINSBERG: I offer Defendants' D882 into evidence.

9 THE COURT: Any objection?

10 MR. RAVI: No objection, subject to not being offered
11 for the truth.

12 THE COURT: Subject to the same instruction, ladies
13 and gentlemen.

14 (Defendants' Exhibit D882 received in evidence)

15 BY MR. GINSBERG:

16 Q. I would ask you to look at the fourth "whereas" paragraph,
17 where it says, "whereas, the board of directors."

18 Do you see that?

19 A. I do.

20 Q. Can you read that to us, please.

21 A. "Whereas, the board of directors finds it is in the best
22 interests of the company to rescind Resolution 13-01 and to
23 adopt Resolution 13-02, granting limited trading and
24 disbursement authorization to Joe Frazier, Blaine Tucker and to
25 Natalie Dempsey, or either of them, to make trades in and

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Lankford - Direct

1 disbursements from accounts owned by the company and which are
2 held and/or managed by Central States Markets, LLC, subject to
3 limitations on the types of trades which can be made and
4 subject to limiting disbursements from said account into
5 accounts owned by the company."

6 THE COURT: I have given a little bit of latitude to
7 both sides to read from documents, but it's to be avoided when
8 the document is in evidence. It's up on the screen and the
9 jurors can see it.

10 MR. GINSBERG: I understand.

11 Q. And to the best of your recollection, in March of 2013,
12 without reference to this document, were you aware that the MNE
13 Services board granted authority to Joe Frazier, Blaine Tucker
14 and Natalie Dempsey to act on its behalf in relation to certain
15 banking activities?

16 MR. RAVI: Objection to leading.

17 THE COURT: One second, please.

18 Sustained.

19 Q. Did you become aware independent of this document, in your
20 role as second chief or as a member of any of the boards?

21 A. I don't recall.

22 Q. You don't recall?

23 A. I don't recall.

24 Q. Does looking at D882 refresh your recollection?

25 A. Not really. I don't recall -- I don't recall this.

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Lankford - Direct

1 THE COURT: Excuse me a second.

2 Go ahead.

3 Q. I would ask you to look at Defendants' D883.

4 Do you recognize the signatures on the second page?

5 A. Gena Lankford, Scott Willard, and Donya Williams.

6 Q. You recognize what this is?

7 A. A resolution of the board of MNE Services, Inc.

8 MR. GINSBERG: I would offer Defendants' Exhibit D883.

9 THE COURT: Any objection?

10 MR. RAVI: No objection. Again, not for its truth.

11 THE COURT: Subject to the same instruction, received.

12 (Defendants' Exhibit D883 received in evidence)

13 BY MR. GINSBERG:

14 Q. I would ask you just to look down at the "now, therefore,
15 be it resolved portion."

16 Do you see that?

17 A. Yes.

18 Q. Without reading the whole thing, did the board resolve that
19 certain individuals were authorized to open accounts and act on
20 behalf of the tribe?

21 A. It appears to be that's what they did.

22 Q. In the paragraph before, "now, therefore, be it resolved,"
23 the "whereas" paragraph, did the board find it in the best
24 interests of the company to appoint Joe Frazier and Blaine
25 Tucker as signatories?

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Lankford - Direct

1 A. It appears to be so, yes.

2 Q. And now we are going to D886.

3 Do you recognize the signatures on the second page?

4 A. I do.

5 Q. Whose signatures are those?

6 A. Myself, Sarah Lawson, Dustin, Donya Williams, Scott
7 Willard.

8 Q. What does this document appear to be?

9 A. It's a resolution of the Miami Tribe of Oklahoma.

10 MR. GINSBERG: I would offer Defendants' D886.

11 MR. RAVI: No objection, not for its truth.

12 THE COURT: Received subject to the same instruction.

13 (Defendants' Exhibit D886 received in evidence)

14 BY MR. GINSBERG:

15 Q. What was the purpose of this resolution?

16 A. Because I was elected as chief of the Miami tribe, there
17 was a resolution changing my position on the AMG board, it
18 appears.

19 Q. What position did you assume based on this resolution?

20 A. Chairman of the board.

21 Q. Did you in fact assume that position?

22 A. I did.

23 Q. Now I would like to go to D894.

24 You have it up on the screen.

25 I would ask you to look at the second page of the document,

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Lankford - Direct

1 the signature page. Do you recognize the signatures?

2 A. Myself, Dustin Olds and Sarah Lawson.

3 Q. What does this document appear to be?

4 A. A resolution of the board of directors of AMG Services,
5 Inc.

6 MR. GINSBERG: I would offer Defendants' D894 in
7 evidence.

8 MR. RAVI: No objection, with the same instruction.

9 THE COURT: Received with the same instruction.

10 (Defendants' Exhibit D894 received in evidence)

11 BY MR. GINSBERG:

12 Q. Without reading through it, if you can just glance at it,
13 does this resolution appear to relate to various actions,
14 rights, privileges, immunities, regarding AMG?

15 A. Yes, it appears.

16 Q. Now, in addition, does D894, the resolution 13-03, if you
17 read it, does it approve agreements regarding the loan
18 operation of the tribe?

19 A. It appears to be.

20 Q. This is the tribal entity that's approving it, correct?

21 A. Yes.

22 Q. I would ask you to go to D896, please.

23 Do you recognize the signatures on the second page?

24 A. I do. Myself, Dustin Olds, and Sarah Lawson.

25 Q. Do you recognize what this is?

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Lankford - Direct

1 A. Yes, a resolution of the AMG board.

2 MR. GINSBERG: I would offer Defendants' D896, your
3 Honor.

4 THE COURT: Any objection?

5 MR. RAVI: No objection, with the same instruction.

6 THE COURT: Same instruction given. Received.

7 (Defendants' Exhibit D896 received in evidence)

8 BY MR. GINSBERG:

9 Q. Again, in summary, does this resolution speak to rights,
10 privileges and immunities concerning the operation of AMG?

11 A. Yes, sir, it appears to be.

12 Q. Does it also discuss, in the third from the bottom
13 "whereas" clause, talk about the tribe owning, servicing and
14 operating Internet lending portfolios and activities?

15 MR. RAVI: Objection to reading the "whereas" clause.
16 It's not being offered for the truth.

17 MR. GINSBERG: It's in evidence. I am just reading.

18 THE COURT: Put a question. It's not received for the
19 truth of its content.

20 If you want to ask the witness, when you saw this,
21 when you read this, what did you do? Or if you want to ask a
22 question which parallels the statement, but ask whether or not
23 the fact is true, I will allow it. OK?

24 Q. Did the board of directors of AMG Services authorize
25 certain entities of the tribe to own, service and operate

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1 Internet lending portfolios and activities?

2 A. Yes, sir. I believe so.

3 Q. D897. Third page first, please, the signature page.

4 Do you recognize the signatures?

5 A. I do.

6 Q. Whose signatures are they?

7 A. Myself and Sarah Lawson.

8 Q. What does this appear to be?

9 A. It appears to be a resolution. It appears to be an AMG
10 resolution.

11 MR. GINSBERG: I would offer Defendants' Exhibit 897.

12 THE COURT: Any objection?

13 MR. RAVI: No objection, with the same instruction.

14 THE COURT: Received. Same instruction.

15 (Defendants' Exhibit D897 received in evidence)

16 BY MR. GINSBERG:

17 Q. Without reference to this document, at this point in time,
18 on August 11, 2013, were you chief of the tribe?

19 A. Yes, sir.

20 Q. Were you chair of certain committees of the tribe?

21 A. Yes, sir.

22 Q. Were you a member of other committees of the tribe?

23 A. I was removed when I became chief, I was removed from the
24 task commission.

25 Q. Were you still on the AMG Services board?

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1 A. I was.

2 Q. In the position that you were in at that time, do you
3 recall AMG and MNES entering into a settlement agreement with
4 Scott Tucker and BA Services?

5 A. I know there was negotiations.

6 Q. There were negotiations about it?

7 A. Yes.

8 Q. Is that what you said?

9 A. Yes.

10 Q. You recall that independent of this document, is that
11 correct?

12 A. Yes, sir.

13 Q. Did you play any role in those negotiations?

14 A. I did not.

15 Q. That was done by either the CEO, CFO, or someone else?

16 MR. RAVI: Objection to leading.

17 THE COURT: Rephrase.

18 Q. Who were the negotiations done with?

19 A. I believe Joe Frazier.

20 Q. What was his title at that time?

21 A. CEO.

22 Q. D899, please. Second page.

23 Do you recognize the signatures?

24 A. I do. Myself and Sarah Lawson.

25 Q. You recognize what this document is?

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1 A. It appears to be, I am not quite so sure, because the
2 resolution doesn't say AMG, but that seems to be what it's
3 talking about.

4 Q. You're saying it appears to be a resolution regarding AMG?

5 A. Yes.

6 MR. GINSBERG: I would offer Defendants' Exhibit D899,
7 your Honor.

8 THE COURT: Any objection?

9 MR. RAVI: No objection, subject to the same
10 instruction.

11 THE COURT: Subject to the same instruction, received.

12 (Defendants' Exhibit D899 received in evidence)

13 THE COURT: Ladies and gentlemen, we will take our
14 mid-morning break.

15 Please do not discuss the case among yourselves or
16 with anyone.

17 We will be back in action in ten minutes. Thank you.

18 (Jury exits courtroom)

19 (Continued on next page)

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1 (Jury not present)

2 THE COURT: You may step down.

3 (Witness excused)

4 THE COURT: We are in recess.

5 MR. GINSBERG: Your Honor, when you come back, you
6 wanted me to raise an issue.

7 THE COURT: You can raise it right now.

8 This is with regard to the exhibit that I sustained
9 the objection to?

10 MR. GINSBERG: There are three similar exhibits where
11 Mr. Lankford was not present at the meetings. He recognized
12 signatures and he recognized generally what they were. It's
13 our position that when Carolyn Williams was on the witness
14 stand, through the questions of Mr. Bath, he established that
15 these minutes were kept in the regular course of the business
16 of the tribe, and she testified that she would take notes or
17 sometimes she recorded things and eventually she would type
18 them up and present it to the board at the next meeting for
19 their approval. So we believe that these are, based upon
20 that --

21 THE COURT: So it has nothing to do with this witness.
22 You're offering it as a business record.

23 MR. GINSBERG: As a business record, established
24 through Ms. Williams, and I wanted to ask some questions, once
25 it came into evidence, of this witness, even though he wasn't

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1 present at the meeting.

2 THE COURT: Let me hear the government's position.

3 MR. RAVI: Your Honor, the defendants had an
4 opportunity to present these board minutes to Ms. Williams and
5 ensure that these were parts of the records that she maintained
6 in the ordinary course, and I don't believe that these
7 particular minutes were done with Ms. Williams when she was on
8 the stand.

9 THE COURT: But you have no objection if Mr. Ginsberg
10 calls a record custodian? Is that what you're telling me?
11 You're going to require him to call a records custodian?

12 MR. RAVI: Your Honor, we are not going to make him
13 call a records custodian.

14 THE COURT: So the objection is withdrawn.

15 Received. Happiness prevails. Have a nice break.

16 (Recess)

17 THE COURT: Bring our jurors in, please.

18 (Continued on next page)

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1 (Jury present)

2 DOUGLAS GLENN LANKFORD, resumed.

3 THE COURT: We are back in action. Please be seated.

4 Mr. Ginsberg, you can pick up where you left off.

5 MR. GINSBERG: Thank you, your Honor.

6 With the court's permission, based upon the ruling
7 that your Honor made and on agreement with the government as to
8 additional documents, the defendants offer Defendants' D2710,
9 which is two pages long, D2714, which is three pages long,
10 D2717, which is two pages long, and D2719, which is two pages
11 long, all of which are minutes of the board of directors of MNE
12 Services on various dates.

13 THE COURT: And you discussed this with opposing
14 counsel and they have no objection.

15 MR. RAVI: No objection.

16 THE COURT: Received. Thank you.

17 (Defendants' Exhibits D2710, D2714, D2717 and D2719
18 received in evidence)

19 BY MR. GINSBERG:

20 Q. Mr. Lankford, did the Miami Nation Enterprises have an
21 annual report prepared for it at the end of each fiscal year in
22 September?

23 A. Yes. They were supposed to.

24 Q. Was the annual report presented to the board of directors
25 at the Miami Nation Enterprises?

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1 A. I assume it was presented to the MNE board.

2 Q. And to your recollection, was the annual report prepared in
3 2013 by the chief executive officer, Joe Frazier?

4 A. I assume that was his job.

5 Q. There is a document, Defendants' Exhibit 921A, in front of
6 you. If you need to refresh your recollection as to who it was
7 presented by, you can look at the first page, and I will ask
8 you, does that refresh your recollection as to who prepared it
9 and presented it?

10 A. Yes, sir.

11 Q. Who --

12 A. Joe Frazier.

13 Q. -- presented it?

14 A. Joe Frazier was chief executive officer.

15 Q. What was the purpose of the annual report?

16 A. I believe this report is supposed to be submitted -- they
17 are supposed to do this report and submit it to the tribe, the
18 Miami tribe.

19 Q. What would be contained in the annual report?

20 A. Financial statements, different things about MNE's year.
21 It's an annual report of how MNE's businesses were doing.

22 (Continued on next page)

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1 BY MR. GINSBERG:

2 Q. And I'd ask you to look at the last page of the document,
3 page 21, and ask if you recognize the signature on the last
4 page.

5 A. Joe Frazier.

6 Q. And I'd ask you if you recognize what Defendants' Exhibit
7 D921A is.

8 A. Yes. It's a report of MNE, annual report.

9 MR. GINSBERG: Your Honor, I wish to offer certain
10 pages of the annual report based upon prior discussions that
11 we've had.

12 THE COURT: Did you show them to opposing counsel?

13 MR. GINSBERG: I believe they've been provided with a
14 copy earlier.

15 THE COURT: Of the pages?

16 MR. GINSBERG: Of all the pages, yes.

17 THE COURT: No, that's not the point, not all the
18 pages.

19 MR. GINSBERG: All the pages that we intended to
20 introduce.

21 THE COURT: All right. Any objection?

22 MR. RAVI: Your Honor, may I ask a couple questions of
23 the witness?

24 THE COURT: Sure.

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Lankford - Direct

1 VOIR DIRE EXAMINATION

2 BY MR. RAVI:

3 Q. Mr. Lankford, do you know with respect to this particular
4 document who it was prepared by?

5 A. Well, it's presented by Joe Frazier. I'm assuming he's got
6 help from other people to help build this document, if I
7 understand what you're asking me.

8 Q. Well, you're assuming, but are you just assuming that based
9 on what you see in front of you?

10 A. Well, no. No. It would have been Joe Frazier. I'm sorry,
11 I probably shouldn't have used "assume." It would have been
12 Joe Frazier that did present the document. He may have had
13 help preparing the document.

14 Q. And you have a specific recollection as to this particular
15 document being prepared by Joe Frazier as part of the annual
16 report?

17 A. I don't know that I per se remember this document, but it
18 seems similar to other documents that have been presented. It
19 seems as -- it appears as it should be. I just don't know that
20 I recall -- actually can recall this exact document.

21 MR. RAVI: No objection, your Honor.

22 THE COURT: All right. Received.

23 (Defendants' Exhibit D921A received in evidence)

24 THE COURT: Ladies and gentlemen, I want to clarify a
25 point on which I may have been misunderstood.

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1 When a resolution comes in, the resolution has
2 "whereas" clauses. The "whereas" clauses recite circumstances.
3 They cite facts, but what is adopted and what you may consider
4 are the content of the resolution, which is not preceded by a
5 "whereas" but is the act, and you may take that as an action
6 taken. But the "whereas" could say on a resolution, "Whereas
7 the moon is made of green cheese"; "Whereas I hope to win the
8 lottery next week"; "Whereas I won the lottery last week."

9 Those things which purport to recite reasons for
10 adopting the resolution may not be considered for the truth of
11 their content. That is not evidence that the facts in the
12 "whereas" clauses are true. However, the resolution you may
13 consider. The resolution is the operative act, and you can
14 consider it and give it such weight as you, the jury, choose is
15 appropriate.

16 When we're talking about the resolutions, we're
17 drawing a distinction between the clauses which are the prelude
18 to the resolution and the resolution itself, and as to the
19 resolution itself, you can give that such weight as you choose.
20 You may not consider the content of the "whereas" clauses as
21 proof of the facts, proof of the statements made therein.

22 All right? I hope that clarifies it.

23 Next question.

24 BY MR. GINSBERG:

25 Q. I refer you to the first page of 921A. Would that be the

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1 cover page of the report?

2 A. Yes, sir.

3 Q. And then I'm going to refer you to another page right after
4 it that doesn't have a number one or two, but it ends with a
5 series of numbers, 32636. Do you see that?

6 A. Yes, sir.

7 Q. The next page after the cover page.

8 A. Yes, sir.

9 Q. Could you tell us what that page is demonstrating?

10 A. Seems to be an organizational chart.

11 Q. Does it show the various boards and committees underneath
12 the Miami Tribe of Oklahoma?

13 A. Yes, sir.

14 Q. I'd ask you to go to the next page, which is numbered page
15 16. Could you just read the top line first?

16 A. "Highlights for the tribe's short-term loan business in
17 Kansas City of the past year are set forth below."

18 Q. And the next paragraph.

19 A. "In August 2013, the business relationships between the
20 tribe's short-term lending entities and the management and
21 software providers in Kansas City were formally memorialized
22 with a set of agreements. A good foundation has been laid
23 going forward."

24 Q. Next paragraph, please.

25 A. "The CPA firm engaged by the tribe has conducted and

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1 continues to perform audits on the books for each of the
2 tribal-owned short-term lending companies."

3 Q. Skip the next one and go to the financial results and just
4 read that.

5 A. "The financial results for the nine months ended September
6 30, 2013, are summarized as follows:

7 "Total gross revenues were \$233,370,000;

8 "Net income was 71,450,000;

9 "Total assets were 189,490,000;

10 "Total liabilities were 47,000 -- 47 million, sorry, 200;

11 "The tribal equity in the short-term loan business was
12 142,200,000."

13 Q. And finally, the last paragraph.

14 A. "The success of the short-term lending operations of the
15 Miami tribe has provided MNE with sustained resources that can
16 and are being used for fund investment opportunities. These
17 investments give the tribe the financial resources necessary to
18 insure our long-term prosperity and financial stimuli."

19 Q. And then would it be fair to say that the next two pages,
20 17 and 18, are financial reports with a series of numbers on
21 them?

22 A. Yes, sir.

23 Q. And would it be typically included in the annual report?

24 A. Yes, sir.

25 Q. And the last page, 21, appears, which has been already

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1 referenced, signed by Joe Frazier, correct?

2 A. Yes, sir.

3 Q. Now, did there come a time when AMG Services or MNE
4 Services entered into an agreement with the United States
5 Attorney's Office?

6 A. There did.

7 Q. And without going into the details about any of the things
8 you discussed with your lawyers, was that something that your
9 lawyers were involved in negotiating?

10 A. Yes, sir.

11 Q. And entering that agreement with the United States
12 Attorney's Office, what is your understanding of the
13 nonprosecution agreement?

14 A. That the tribe would not -- the business entities of the
15 tribe would not be prosecuted.

16 Q. In addition to that portion of it, was the tribe required
17 to forfeit any money to the government?

18 A. Yes, they were.

19 Q. And how much was the tribe required to forfeit?

20 A. Around \$48 million.

21 Q. And how much was the tribe permitted to keep of the money
22 that it had earned from the short-term lending?

23 A. Probably in the range of 12 to -- 12 or so million.

24 Q. And that was the money that was on hand in 2016, when the
25 agreement was signed, is that correct?

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1 A. Yes, sir.

2 Q. And that \$12 million was money earned as a result of the
3 short-term lending business by the tribe, correct?

4 THE COURT: If you know.

5 THE WITNESS: I don't know that all of it was, but I
6 know a portion of it was, your Honor.

7 THE COURT: OK. Thank you.

8 BY MR. GINSBERG:

9 Q. Now, did you sign the nonprosecution agreement?

10 A. I did.

11 Q. And did you sign -- in what capacity did you sign? And if
12 you need any reference, you can go to defendant's D2052.

13 MR. GINSBERG: I think the better way to do it, your
14 Honor, is I offer that.

15 THE COURT: All right. Any objection?

16 That being?

17 MR. GINSBERG: Defendants' Exhibit D2052.

18 THE COURT: Any objection?

19 MR. RAVI: No objection.

20 THE COURT: Received.

21 (Defendants' Exhibit D2052 received in evidence)

22 BY MR. GINSBERG:

23 Q. When you signed this agreement, did you read the entire
24 agreement?

25 A. Yes, sir, I believe so.

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1 Q. And did you read the attachment, the exhibit A statement of
2 facts that's attached to the agreement?

3 A. Yes, sir.

4 Q. And I'd ask you specifically to look at the final page,
5 which is exhibit A, and paragraph 4. Do you see that?

6 A. Yes, sir.

7 Q. Now, when you signed this nonprosecution agreement and
8 paragraph 4 was contained in the statement of facts, did you
9 sign it because you believed paragraph 4 to be true or because
10 someone else told you it was true?

11 A. I signed it because I believed it to be true.

12 Q. And what you believed to be true was that in certain
13 declarations that certain individuals made, they overstated
14 involvement of the tribe or their involvement in the payday
15 lending business, is that correct?

16 A. That's correct, sir.

17 Q. But it does not say, in paragraph 4 or anywhere else, that
18 the tribe was not involved in the payday lending business, does
19 it?

20 THE COURT: Sustained as to form.

21 Q. Is there any other paragraph in this document that
22 indicates something that the tribe did that you believe was
23 wrong?

24 A. I -- I don't understand your question.

25 Q. Paragraph 4 talks about something you believe was done that

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1 was not correct, is that right?

2 A. Yes.

3 Q. Is there any other paragraph in the statement of facts, or
4 otherwise in the document, that you signed, that indicates a
5 belief on your part of anything else you believe the tribe had
6 done wrong?

7 MR. RAVI: Objection to form, your Honor.

8 THE COURT: Sustained.

9 Q. Was it -- did you sign this document based upon the advice
10 of counsel?

11 MR. RAVI: Objection.

12 THE COURT: Sustained.

13 BY MR. GINSBERG:

14 Q. Did you review the entire exhibit A statement of facts?

15 A. What was that?

16 Q. Did you review the entire exhibit A statement of facts?

17 A. Yes.

18 Q. Did you request or did the government request that you add
19 anything to that statement of facts?

20 A. Than what we signed? I don't think so.

21 Q. And as to paragraph 4, the overstatements that you're
22 referring to, were they principally done by Don Brady?

23 MR. RAVI: Objection as to leading.

24 THE COURT: Rephrase it, please.

25 Q. Who were the overstatements principally done by that you're

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1 referring to in paragraph 4?

2 THE COURT: Rephrase your question.

3 Q. In paragraph 4, you're referring to overstatements by
4 certain individuals or representatives of the tribe, is that
5 correct?

6 THE COURT: Why don't you read paragraph 4, sir. Take
7 your time and read paragraph 4.

8 THE WITNESS: All right, sir.

9 THE COURT: OK. Now ask your question.

10 BY MR. GINSBERG:

11 Q. Were the overstatements that you're referring to in that
12 paragraph principally done by Don Brady?

13 A. Yes, sir.

14 Q. And in that paragraph, or anywhere else in the document,
15 did you say that Don Brady or any other representative of the
16 tribe had made declarations that were completely false?

17 MR. RAVI: Objection.

18 THE COURT: Yes. This is not cross-examination.
19 Sustained as to form.

20 MR. GINSBERG: I have nothing further at this time.

21 THE COURT: OK. Mr. Bath.

22 MR. BATH: Eli, can we put 2052 back up, please.

23 FURTHER DIRECT EXAMINATION

24 BY MR. BATH:

25 Q. Mr. Lankford, it's going to be up on the screen. Let me

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1 know if you see that or you don't see it.

2 A. OK.

3 Q. This is the document Mr. Ginsberg asked you about a minute
4 ago. Do you recall that?

5 A. I do.

6 MR. BATH: Can we go to the signature page, please,
7 and that's 2 or 3.

8 Q. We see that you signed, correct?

9 A. That's correct.

10 Q. Ms. Williams signed, is that correct?

11 A. That's correct.

12 Q. And you signed on behalf of AMG, correct?

13 A. That's correct.

14 Q. And Ms. Williams signed on behalf of MNES, correct?

15 A. That's correct.

16 Q. All right. And then there's a Guy Petrillo who signed as
17 attorney for AMG and MNES, is that correct?

18 A. That's correct.

19 MR. BATH: Thanks. You can take that down.

20 Q. I understand this agreement, as you told us, is that you
21 forfeited -- you being the tribe -- forfeited about \$48
22 million?

23 A. Yes, sir.

24 Q. And kept about \$12 million?

25 A. Yes, sir.

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1 Q. All right. And that was as of 2016, was it not?

2 A. That's correct.

3 Q. We saw the financial statements that Joe Frazier presented
4 in 2013, just before that document. Do you remember that?

5 A. Yes, sir.

6 Q. And you remember that document, and I can put it up for you
7 if you need it, that showed that the tribe had tens of millions
8 of dollars, did it not?

9 THE COURT: There was an audibility issue. That the
10 tribe had?

11 MR. BATH: Tens of millions of dollars.

12 THE COURT: OK. Go ahead.

13 A. Yes.

14 Q. All right. Is it fair to say, between 2013 and the time of
15 the agreement you made with the U.S. Attorney's Office, that
16 the tribe had spent some of that money?

17 A. Yes, sir.

18 Q. You had bought lots of businesses, the tribe had, hadn't
19 you?

20 A. It had bought some businesses, yes, sir.

21 Q. Right. And can you give an estimate, as chief of the
22 tribe, how much money you spent on buying businesses from 2013
23 to 2016?

24 A. I really -- I can't. I don't even know how to ballpark
25 that --

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1 Q. OK.

2 A. -- because there's a lot, a lot of things involved in those
3 business purchases and things.

4 Q. All right. Can you recall and account for us the
5 businesses that you did buy between 2013 and 2016?

6 A. Most of them, I think, were purchased -- yes, there was CK
7 Construction, Carnahan-White, Excel Utility, TSI-Global, Ohio
8 Ambulance Company, BJ Tidwell Enterprises and Hoffman
9 Countertops, I believe.

10 Q. Those ones you've listed for us were purchased before 2016?

11 A. Yes.

12 Q. All right. And sometime in the range of '13 to '15?

13 A. Yes.

14 Q. 2013 to 2015, correct?

15 A. Yes, sir.

16 Q. OK. All right.

17 Did there come a time that the tribe got out of the lending
18 business?

19 A. It did.

20 Q. Do you know when that was, year first?

21 A. It was sometime in 2014, I believe.

22 Q. You don't you know if it was early or late?

23 Fair enough. OK. Just sometime in 2014, correct?

24 A. Yes.

25 THE COURT: Ladies and gentlemen, you should be aware

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1 that the indictment in this case charges a conspiracy from at
2 least in or about 1997 up to and including in or about August
3 2013. Any evidence of conduct after August 2013 is not to be
4 considered as proof of the charges in the indictment. It is
5 not conduct that is alleged to be unlawful in any respect, and
6 it may not be considered by you as proof of the charges in the
7 indictment, nor is it a valid comparison, because you're not to
8 speculate as to why any conduct after August 2013 is not
9 included in the charges. That's just not something that's
10 before you in this case.

11 All right, ladies and gentlemen?

12 Go ahead.

13 MR. BATH: Thank you, Judge.

14 Eli, could we please put up 854.

15 Q. Is 854 up on your screen, Mr. Lankford?

16 A. Yes, sir.

17 Q. You may recall this is one of the numerous resolutions you
18 saw on direct examination. Do you recall that?

19 A. Yes, sir.

20 Q. All right. And this, as we talked about earlier, has these
21 first six "whereas" clauses, correct?

22 A. Yes, sir.

23 Q. Then after the last "whereas" clause, it says, it now
24 therefore be resolved, "Joe Frazier is appointed as signatory
25 on the following bank accounts at Central States Capital

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1 Market." Do you see that?

2 A. I do.

3 Q. Then below that, they list a number of accounts --

4 MR. BATH: Thank you, Eli.

5 Q. -- portfolios at Central States, correct?

6 A. Yes, sir.

7 Q. Independent of 854, are you aware that, in fact, the tribe
8 had bank accounts at Central States?

9 A. I knew we had bank accounts. I'm not sure I knew Central
10 States.

11 Q. You probably don't -- you don't recall the names of the
12 banks?

13 A. The one kind of jogged my memory, but I can't remember what
14 document it was on.

15 Q. OK. Fair enough. You don't have information to think you
16 didn't have accounts at Central States, did you?

17 A. No, sir.

18 Q. All right. Fair enough.

19 And this resolution that therefore be resolved is that
20 you're putting Joe Frazier on your account, on the tribal
21 account, correct?

22 A. Yes, sir.

23 Q. Because it's your account, right?

24 A. Yes, sir.

25 Q. Because as the owner of the bank account, you can put

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1 people on and you can take people off, right?

2 A. Yes, sir.

3 Q. And we saw that with a number of resolutions.

4 MR. BATH: You can take that down. Thanks, Eli.

5 Q. We saw that with a number of resolutions, because you own
6 the accounts, you put people on and you take them off, right?

7 A. Yes, sir.

8 Q. Just like you might do on a personal bank account, right?

9 A. Yes, sir.

10 MR. BATH: 855, please, Eli.

11 Q. Let me know when that's on your screen, sir.

12 A. It's there.

13 Q. Down there after the "whereas" clauses, "therefore, be it
14 resolved," it talks about NEMS --

15 MR. BATH: No. Above that. I'm sorry. Two "be it
16 resolveds." Thank you.

17 Q. It talks about, that the tribe wanted some return of funds.
18 Do you remember that?

19 A. I see that.

20 Q. And that's not because any of those firms are doing a bad
21 job; they just were holding money for the tribe, is that right?

22 A. That's -- I'm -- I --

23 Q. If you know.

24 A. I don't know.

25 Q. Fair enough. Do you know after this date, and the date of

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1 this --

2 MR. BATH: Could we go to the top. No, not the top,
3 Eli. I'm sorry. Go down. Maybe it's the second page.

4 Q. You see the date is the 16th of November 2012?

5 A. Yes, sir.

6 Q. Right. Do you recall that after that date, Tim Muir's firm
7 continued to do work for AMG?

8 A. I don't know.

9 Q. OK. Fair enough.

10 MR. BATH: If we could look at 2738A, please, Eli.

11 Q. I'm going to put that up for you, Mr. Lankford. Let me
12 know when it's there.

13 A. It's there.

14 Q. All right. This is an AMG board meeting, January 24 of
15 '13, correct?

16 A. Yes, sir.

17 MR. BATH: If you go to the second page, please, Eli.
18 Could we go down to the "old business (a)" and just highlight
19 that paragraph, please.

20 Q. Mr. Frazier is the CFO at the time, is that correct?

21 A. Yes.

22 MR. BATH: And could we go to the next page. Thank
23 you, Eli.

24 Finally, if we could go to 833.

25 Q. Let me know when you have that, Mr. Lankford.

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1 MR. BATH: Oh, I'm sorry. If I could just have one
2 second, Judge. I apologize. It's 883.

3 I'm sorry, Mr. Lankford.

4 If we could blow up the last two lines of that
5 document.

6 Q. This is, again, a resolution. Do you see that,
7 Mr. Lankford?

8 A. I do.

9 Q. I want to blow up a certain section and there's another
10 name of a bank account there, First International Bank. Do you
11 see that?

12 A. I do.

13 Q. And that's under the resolved portion of this document, is
14 it not?

15 A. Yes, sir.

16 Q. Does that trigger your memory that the tribe had a bank
17 account at First International?

18 A. I don't recall that bank account.

19 MR. BATH: Fair enough. I understand. Thank you so
20 much.

21 That's all I have, Judge.

22 THE COURT: All right.

23 You may cross-examine.

24 MR. RAVI: Thank you.

25 CROSS-EXAMINATION

Ha3Wtuc3

Lankford - Cross

1 BY MR. RAVI:

2 Q. Good afternoon, Mr. Lankford.

3 A. Good afternoon.

4 Q. Now, you first learned about the tribe's involvement in
5 payday lending when you were IT administrator, correct?

6 A. Yes, sir.

7 Q. That was approximately after 2002, right?

8 A. Sometime in there, yeah.

9 Q. And you didn't know much about the loan business at that
10 time, right?

11 A. No, sir.

12 Q. And you weren't involved in the decision to enter that
13 business, right?

14 A. I was not.

15 Q. And all you knew was that there was this lending business
16 and that Don Brady was involved in it, right?

17 A. Yes, sir.

18 Q. And you mentioned that while you were IT administrator, you
19 mentioned during direct that you had received a couple
20 computers, right?

21 A. Yes, sir.

22 Q. Those were basically personal-use computers, correct?

23 A. They were, they were computers that were very similar to a
24 home PC.

25 Q. And you don't know how those computers were involved in the

Ha3Wtuc3

Lankford - Cross

1 loan business, right?

2 A. I do not.

3 Q. To your knowledge, they weren't involved in any processing
4 of loans, correct?

5 A. I don't know what they did.

6 Q. And also, while you continued to be IT administrator, what
7 you did know about the loan business was that it wasn't
8 operated at the tribe, right?

9 A. I knew it was based in Kansas City.

10 Q. It was based in Kansas City, right?

11 A. Yes, sir.

12 Q. And it was being operated by Scott Tucker, right?

13 A. Yes, sir.

14 Q. And it was being managed by Scott Tucker and other people
15 working for Scott Tucker, right?

16 A. Yes, sir.

17 Q. And you also knew that the loan business was important to
18 the tribe because it generated money, right?

19 A. Yes, sir.

20 Q. And Chief Gamble was the chief at that time, right?

21 A. He was.

22 Q. And you knew, while you were IT administrator, that the
23 loan business was important to Chief Gamble?

24 A. I'm --

25 Q. IT administrator.

Ha3Wtuc3

Lankford - Cross

1 A. Well, Chief Gamble, it was actually, when I was -- back in
2 2002, Chief Leonard would have been chief at that point.

3 Q. OK, but you understood that the loan company was important
4 to the tribe?

5 A. Yes, sir.

6 Q. Now, you became second chief around 2008?

7 A. Yes, sir.

8 Q. And because you were second chief, you began -- you had a
9 position on the AMG board, correct?

10 A. Yes, sir.

11 Q. Now, the AMG board didn't sit frequently when it began in
12 2008, right?

13 A. No.

14 Q. In fact, the board, it may have had an initial meeting, but
15 it didn't really meet between 2008 and 2011, right?

16 A. I don't recall how many times, but it wasn't a regular
17 meeting.

18 Q. And when the board did begin meeting, it was only really
19 after an article came out about the payday loan business,
20 right?

21 A. There were, there were things that triggered meetings. I
22 mean that -- I recall that one.

23 Q. Do you recall an article coming out about the payday loan
24 business, without going into the contents of it?

25 A. I do.

Ha3Wtuc3

Lankford - Cross

1 Q. And you also know that the FTC investigation became public
2 in 2012, right?

3 A. Yes, sir.

4 Q. And there was also an audit, an IRS audit of the tribe and
5 various of its entities, correct?

6 THE COURT: Fix a time.

7 MR. RAVI: Around 2011 and 2012.

8 A. I assume. I'm not real positive about that, that IRS
9 audit.

10 Q. OK, but because of this article that came out and because
11 of the FTC investigation, AMG's board started actually meeting,
12 correct?

13 A. Meeting more often.

14 Q. And the FTC investigation was a big problem for the tribe,
15 right?

16 A. It was a problem, yes.

17 Q. And it was brought by a federal agency, right?

18 A. It was.

19 Q. And the tribe doesn't have sovereign immunity against a
20 federal agency, correct?

21 A. No, they do not.

22 Q. At the times the board did sit, it mostly talked about the
23 money the tribe was receiving from Scott Tucker, correct?

24 A. That would be one of the topics, yes.

25 Q. And it would receive, the tribe would receive checks,

Ha3Wtuc3

Lankford - Cross

1 correct, from Scott Tucker?

2 A. From the lending company, yes.

3 Q. Now, to your knowledge, prior to any of the FTC
4 investigations becoming public, the AMG board didn't make any
5 decisions regarding the operations of the loan company,
6 correct?

7 A. They did not.

8 Q. Scott Tucker made those decisions, to your knowledge,
9 right?

10 A. I don't know that he made a decision. I just know we did
11 not.

12 Q. The AMG board did not make any decisions?

13 A. No, sir.

14 Q. The AMG board didn't set any interest rates for the loans
15 that were issued as part of the loan company, correct?

16 A. They did not.

17 Q. And AMG's board and the tribe did not provide any money
18 that was being lent out as part of the loan company, correct?

19 A. They did not.

20 Q. And in fact, even while you were sitting on the AMG board,
21 you didn't know much about the operations that were occurring
22 in Kansas City, right?

23 A. I did not.

24 Q. You didn't know who managed the day-to-day operations up
25 there, right?

Ha3Wtuc3

Lankford - Cross

1 A. Not really. I knew -- I know of certain people.

2 Q. One of those people, Scott Tucker, you know was involved?

3 A. Yes, sir.

4 Q. But you didn't know all the people below Scott Tucker and
5 what they were doing at the company, correct?

6 A. No, sir.

7 Q. Now, you met Scott Tucker about, between approximately
8 eight and 15 times, would you say?

9 A. Somewhere in that range, yes, sir.

10 Q. At some point you went to the Kansas City loan company,
11 correct?

12 A. I did.

13 Q. And you also went to a couple baseball games, paid for by
14 Scott Tucker, correct?

15 A. Went to some baseball games, yes, sir.

16 Q. In Kansas City?

17 A. Yes, sir.

18 Q. And other people on the tribe also went to those games,
19 right?

20 A. Yes, sir.

21 Q. You've also flown in Scott Tucker's jet a few times, right?

22 A. I have.

23 Q. Four or five times?

24 A. I'm not positive about the number, but a few times, yes,
25 sir.

Ha3Wtuc3

Lankford - Cross

1 Q. And one of the times you met with Scott Tucker was at a
2 Mexican restaurant, correct?

3 A. Yes.

4 Q. And that was prior to the FTC litigation?

5 A. Yes, sir.

6 Q. Chief Gamble was there, right?

7 A. Yes, sir.

8 Q. And Don Brady was there?

9 A. Yes, sir.

10 Q. And at that lunch meeting, you made a statement that the
11 money and the loan company belonged to the tribe, right?

12 A. I did.

13 Q. And when you said that, you said that because it was based
14 on what you had been told by Tom Gamble and Don Brady, correct?

15 A. Yes.

16 Q. And Scott Tucker was present when you said that the money
17 and the loan company belonged to the tribe, right?

18 A. Well -- can we go back?

19 Q. Sure.

20 A. Well -- never mind. Go ahead. I'm confused. Sorry.

21 Q. So while Scott Tucker was present, you said the statement
22 that the money and the loan company belonged to the tribe,
23 right?

24 A. Yes.

25 Q. And Scott Tucker responded to your statement, correct?

Ha3Wtuc3

Lankford - Cross

- 1 A. He did.
- 2 Q. What did Scott Tucker say?
- 3 A. He said that money was his.
- 4 Q. Did he say anything else?
- 5 A. No. I don't believe so. He made the statement.
- 6 Q. What was his demeanor when he said that?
- 7 A. He was upset.
- 8 Q. And Don Brady also wasn't happy that you said that
- 9 statement there, correct?
- 10 A. I didn't think he was happy with my statement.
- 11 Q. And Tom Gamble wasn't happy with the fact that you said
- 12 that statement, correct?
- 13 A. Yes, sir.
- 14 Q. And it was pretty awkward when Mr. Tucker said that to you
- 15 in that lunch meeting, right?
- 16 A. Yes.
- 17 Q. But you let it go, correct?
- 18 A. I did.
- 19 Q. You didn't bring it up again during that meeting?
- 20 A. I did not.
- 21 Q. And that was because the tribe's relationship with
- 22 Mr. Tucker was too important, right?
- 23 A. That is correct.
- 24 Q. And Mr. Gamble told you that, right?
- 25 A. Yes, sir.

Ha3Wtuc3

Lankford - Cross

1 Q. And Mr. Brady told you that, right?

2 A. Yes, sir.

3 Q. And you understood that Scott Tucker could take the payday
4 loan business and go somewhere else, right?

5 A. I knew that he worked with two other tribes.

6 Q. And you knew that he could take the payday loan business
7 from the Miami and go to those other tribes if he wanted,
8 right?

9 A. Yes, sir.

10 Q. Now, after the FTC investigation became public in April
11 2012, you remember discussing something called the BA Services
12 licensing agreement?

13 A. Yes, sir.

14 Q. And BA Services, I think you testified on direct, was a
15 company owned by Scott Tucker, right?

16 A. Yes, sir.

17 Q. And you were told -- and this BA Services licensing
18 agreement was presented to the AMG board, correct?

19 A. Yes, sir.

20 Q. And you were told that the purpose of that agreement was to
21 acquire some software from Mr. Tucker, correct?

22 A. I believe it was for use of software.

23 Q. For use of software, right?

24 A. Yes, sir.

25 Q. And the software's referred to as ecash; does that sound

Ha3Wtuc3

Lankford - Cross

1 familiar?

2 A. I'm not positive -- it was an agreement to use software.

3 Q. It was the software to operate the loan company, correct?

4 A. Yes, sir.

5 Q. But the loan company was already operating using that same
6 software when this agreement was presented to you, correct?

7 A. Yes. I'm assuming so, yes, sir.

8 Q. Scott Tucker was using that software to operate the loan
9 company, right?

10 A. Yes, sir.

11 Q. But even though the loan company was already being operated
12 using that software, you were told you needed to agree to this
13 BA Services agreement in order to use that software for the
14 loan company, correct?

15 A. For continued use, yes, sir.

16 Q. And Mr. Brady told you that you should agree to that
17 agreement, correct?

18 A. Yes, sir.

19 Q. Mr. Gamble told you that you should agree to that
20 agreement?

21 A. Yes, sir.

22 Q. And again, you understood that if you didn't sign on to
23 that agreement, Mr. Tucker could take the loan business to
24 another tribe, right?

25 A. I understood that if we didn't come to an agreement, that

Ha3Wtuc3

Lankford - Cross

1 we might not be in the lending space, lending business.

2 Q. And that generated significant income for the tribe,
3 correct?

4 A. It did.

5 Q. You then ran for chief. You ran for chief in 2013,
6 correct?

7 A. Yes, sir.

8 Q. And when you ran for election, you ran against Chief
9 Gamble, right?

10 A. I did.

11 Q. And you ran against Chief Gamble, in part, because you
12 believed he was too beholden to Mr. Tucker, correct?

13 A. That's correct.

14 Q. That Chief Gamble let Mr. Tucker do whatever he wanted,
15 correct?

16 A. You could say that, yes, sir.

17 Q. And you won that election, correct?

18 A. I did.

19 Q. And when you won that election in 2013, you weren't very
20 familiar with any of the agreements that Mr. Gamble and
21 Mr. Brady had made with Mr. Tucker, correct?

22 A. No.

23 Q. You weren't familiar with the agreement in which the tribe
24 came to enter this business, correct?

25 A. Only from history's point of view.

Ha3Wtuc3

Lankford - Cross

1 Q. That all happened before you became chief, correct?

2 A. Yes.

3 Q. Now, you were shown Exhibit D921A, correct? Do you still
4 have that in front of you?

5 A. No, there's nothing in front of me, sir.

6 Oh, there it is. Yes, sir.

7 Q. This is that annual report, correct?

8 A. Yes, sir.

9 Q. And it contains various financial statements, correct?

10 A. Yes, sir.

11 Q. Now, the tribe has to provide -- has to do audits on a
12 regular basis, correct?

13 A. Yes, sir.

14 Q. And it has to provide those audits to the department of
15 interior, correct?

16 A. That's correct.

17 Q. And as part of those audits, the tribe has to include in
18 those audits any businesses that are owned by the tribe,
19 correct?

20 A. That's correct.

21 Q. As far as its financial statement?

22 A. That's correct.

23 Q. Prior to 2012, you're not aware of the loan company being
24 on the audits that were provided to the department of interior,
25 correct?

Ha3Wtuc3

Lankford - Cross

1 A. I believe that's correct, yes, sir.

2 Q. Just to confirm, it's true that the tribe's audits did not
3 list the loan company as part of what its businesses were,
4 correct?

5 A. I believe that at one time that they had not being, been
6 listed on those.

7 Q. Was that prior to 2012?

8 A. It was pre -- it was during the time while Chief Gamble was
9 chief.

10 Q. And he was chief up to 2013, correct?

11 A. Yes.

12 Q. So prior to that --

13 A. It was sometime while he was chief. I recall that there
14 had been a note that they -- those businesses had not been
15 being audited as part of the tribe's and submitted as part of
16 the tribe's.

17 Q. So in other words, up to when Chief Gamble was no longer
18 chief in 2013, the loan company was not included in the audits
19 that the tribe provided to the department of interior?

20 A. That's correct.

21 Q. Now, after the FTC investigation became public, the tribe
22 as well as AMG and MNES retained counsel, correct?

23 A. They did.

24 Q. And that was Kirkland & Ellis?

25 A. It was.

Ha3Wtuc3

Lankford - Cross

1 Q. And after Kirkland & Ellis was retained, Don Brady was
2 fired, right?

3 A. Yes, sir.

4 Q. And that was around November 2012?

5 A. Yes, sir.

6 Q. And Joe Frazier took Don Brady's place?

7 A. He did.

8 Q. He became the main tribal contact with Scott Tucker at that
9 time?

10 A. For the lending company, yes, sir.

11 Q. And also after Kirkland & Ellis was retained and Don Brady
12 was terminated, in around November 2012, the tribe began to
13 identify bank accounts that were in the names of AMG and MNES,
14 correct?

15 A. Yes, sir.

16 Q. And those accounts had been under the exclusive control of
17 Mr. Tucker, correct?

18 A. Yes, sir.

19 Q. The tribe didn't even have signature authority on those
20 accounts, right?

21 A. No, they did not.

22 Q. But after the tribe retained counsel, the tribe began to
23 identify those accounts, correct?

24 A. Yes, sir.

25 Q. And as the tribe identified these accounts, the tribe then

Ha3Wtuc3

Lankford - Cross

1 began to take some control over those accounts, correct?

2 A. Yes, sir.

3 Q. And when the tribe took control of those accounts, there
4 was money sitting in them, correct?

5 A. That's correct.

6 Q. There were millions of dollars sitting in there, right?

7 A. Yes, sir.

8 Q. And that money, did you understand that that money came
9 from the payday loan business? Correct?

10 A. I did.

11 Q. And that money had previously been under the control of
12 Mr. Tucker, correct?

13 A. Yes.

14 Q. Now, after the tribe -- we saw some resolutions where
15 Mr. Tucker was taken off as signatory, signature authority on
16 some accounts, correct?

17 A. Yes, sir.

18 Q. But then later on, in March 2013, we also saw some
19 resolutions where Blaine Tucker and Natalie Dempsey were put
20 back on to some bank accounts, correct?

21 A. Yes, sir.

22 Q. And those were people associated with Mr. Tucker's loan
23 business, correct?

24 A. Yes, sir.

25 Q. And part of the reason was that the tribe was still

Ha3Wtuc3

Lankford - Cross

1 engaging in lending with Mr. Tucker, correct?

2 A. Yes, sir.

3 Q. And the tribe couldn't operate a lending business without
4 Mr. Tucker, correct?

5 A. No, sir.

6 Q. It was Mr. Tucker's business, right?

7 A. Yes, sir.

8 Q. And then after March 2013, you were also shown several
9 resolutions regarding various agreements that were signed with
10 Mr. Tucker, correct?

11 A. The date? Could you repeat that, sir?

12 Q. Sure. After March 2013.

13 A. Yes.

14 Q. And you're not familiar with the terms and conditions of
15 those various agreements, correct?

16 A. I don't believe so, no, sir.

17 Q. And then in December 2013, the tribe, AMG and MNES received
18 a subpoena from the U.S. Attorney's Office, correct?

19 A. Yes, sir.

20 Q. And that subpoena specifically asked for documents and
21 information relating to Scott Tucker, correct?

22 A. Yes, sir.

23 Q. And around this exact same time, the tribe was -- the loan
24 business was having a problem finding a bank account to process
25 the loans, correct?

Ha3Wtuc3

Lankford - Cross

1 A. Yes, sir.

2 MR. RAVI: If we could show D2748A.

3 Q. If you look to Roman II(a), in the last three lines, it
4 says, "Bay cities has advised after the end of March 2013, they
5 will no longer work online lending companies' ACH and
6 electronic billing companies, which are integral to the
7 operation of the online loan company." Correct?

8 A. That's correct.

9 Q. So the loan company, which was still being operated by
10 Mr. Tucker, was looking for a bank to conduct its business,
11 right?

12 A. Yes, sir.

13 Q. But it was having a hard -- it was difficult to find a bank
14 that would process the loans after these various investigations
15 came to light, correct?

16 A. Yes, sir.

17 Q. And then you said in April 2014, approximately, the tribe
18 was no longer in payday lending, correct?

19 A. Yes, sir.

20 Q. And the tribe was no longer in a relationship with Scott
21 Tucker then as well, correct?

22 A. Yes, sir.

23 Q. And that's because once the relationship with Mr. Tucker
24 terminated, after that criminal subpoena was served, the tribe
25 could no longer do business, right?

Ha3Wtuc3

Lankford - Cross

1 A. We weren't able to operate online lending.

2 Q. You were asked during direct about that nonprosecution
3 agreement, correct?

4 A. That's correct.

5 Q. And through counsel, the tribe engaged in discussions with
6 the United States Attorney's Office for the Southern District
7 of New York about the nonprosecution agreement, correct?

8 A. That's correct.

9 Q. And the tribe agreed to forfeit \$48 million, correct?

10 A. That is correct.

11 Q. And that \$48 million, part of it was from the money that
12 was sitting in those bank accounts that came from the payday
13 loan company, correct?

14 A. That's correct.

15 Q. And you mentioned that there was some other spending of
16 some of that money on various businesses for the tribe,
17 correct?

18 A. Yes, sir.

19 Q. And a lot of -- there was other money that was also spent
20 on lawyers, right?

21 A. Yes, sir.

22 Q. There were a lot of lawyers that the tribe had hired --

23 A. Yes, sir.

24 Q. -- by that point in December -- sorry, in 2016, correct?

25 A. Yes, sir.

Ha3Wtuc3

Lankford - Cross

1 Q. And in the discussions with the U.S. Attorney's Office, you
2 personally had discussions regarding letting the tribe keep
3 some money for tribal programs, correct?

4 A. I did.

5 Q. And can you describe what some of those tribal programs
6 are?

7 A. Again, that would have been our elder benefit card, for our
8 elders; scholarships; back-to-school funds, language
9 revitalization efforts and cultural revitalization efforts; our
10 annual powwow; things that, all the events we do for our tribal
11 citizens.

12 Q. And without the income that the tribe had become reliant on
13 from Scott Tucker's loan company, if there wasn't money to --
14 that was coming in anymore from the loan company, you couldn't
15 continue those tribal programs, correct?

16 A. We would not have been able to.

17 Q. And so you specifically asked to be able to keep some of
18 that money in order to run those tribal programs?

19 A. I did.

20 Q. And you were allowed to keep approximately \$12 million, you
21 said?

22 A. Yes, sir.

23 Q. I want to turn now to D2052.

24 THE COURT: All right. Ladies and gentlemen, we're
25 going to break a little bit early for lunch. Please do not

Ha3Wtuc3

Lankford - Cross

1 discuss the case among yourselves or with anyone. Please have
2 a good lunch, and we'll see you back in action.

3 (Continued on next page)

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Ha3Wtuc3

1 THE COURT: And you may step down.

2 (Witness not present)

3 THE COURT: All right. Please be seated.

4 After the testimony resumed, after the break, the
5 Court was handed a note by my deputy, which has been marked as
6 Court Exhibit 11, which reads:

7 "Judge Castel, resolutions appear to be the method
8 used for tribes to affirm actions taken. Therefore,
9 resolutions appear to play an integral role in tribes' business
10 processes. Thus, I do not understand your instructions to not
11 take the resolutions for truth of fact. I understand and have
12 used resolutions in their 'generic' sense, mostly for
13 recognition, but in the operations of the tribes, resolutions
14 appear to have a different purpose and appear as a vehicle to
15 document statements, actions of fact. What is the purpose of
16 these 'signed,' 'dated' resolutions by the tribes?"

17 And it's signed by juror No. 11.

18 You'll note that I clarified that my assertion that
19 "whereas" clauses in a resolution are not admitted for the
20 truth of their content and gave some intentionally absurd
21 examples, such as the moon being made of green cheese, but made
22 the point that the resolution itself is the action of the tribe
23 and may be considered for that purpose.

24 If anybody wants me to give an additional instruction,
25 I'll be happy to consider it.

Ha3Wtuc3

1 See you after lunch.

2 (Luncheon recess)

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HA38TUC4

AFTERNOON SESSION

2:00 p.m.

(Jury not present)

THE COURT: I understand somebody wants to talk to me?
Yes, no?

MR. BATH: Judge, it won't come up for these first two witnesses, but maybe at the break. We'd just like you to know we would like to address the court.

The issue is going to be the scope of Conly Schulte's testimony and also the subpoena issue of Mr. Muir. We can get these next witnesses done without that.

THE COURT: All right.

What did you want to know?

MR. BATH: The government filed last night the crime fraud requests, and they are asking the court to make that finding. They are indicating they want the documents, and I understand that. If we produce those documents, it seems that two witnesses this afternoon, Schulte and Morgan, would be impacted by those documents and it may be premature to call them as witnesses until we produce those documents for both direct and potential cross.

THE COURT: What is the government's position?

MR. VELAMOOR: Judge, our position is we served an if, as and when subpoena on defendants. It's our understanding the documents produced in response to that subpoena are customarily

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1 and appropriately produced if, as and when Mr. Muir testifies.
2 So we don't understand how it relates to calling Mr. Schulte or
3 Mr. Morgan.

4 THE COURT: The reason why I think it relates or
5 applies is because these are communications between Mr. Schulte
6 and Mr. Muir.

7 MR. VELAMoor: I certainly understand that.

8 THE COURT: So you want to make sure that the
9 defendant can't ask Mr. Schulte about them before you get a
10 chance to ask Mr. Muir, is that the plan?

11 MR. VELAMoor: Certainly not to make sure they can't
12 do anything. Our position is the only appropriate time we
13 understand that we could ask for these documents is upon the
14 defendant himself testifying.

15 THE COURT: Where does that come from? Because he
16 hasn't testified. If it's the fact that he is going to
17 testify, we have known that since September 12th. If it's the
18 fact that he is testifying, he hasn't done that. So how does
19 this just ripen in the last 24 hours? Because he hasn't
20 testified, he is not on the stand, and he said he was going to
21 testify on September 12. So why yesterday or today or last
22 night? The answer is?

23 MR. VELAMoor: I may be misunderstanding, and I
24 apologize if I am. My understanding --

25 THE COURT: You're only entitled to this upon Mr. Muir

HA38TUC4

1 testifying.

2 MR. VELAMOOD: Correct.

3 THE COURT: Either that literally means upon him
4 testifying, which hasn't happened, which means you're not
5 entitled to it. Or it means upon realizing that Mr. Muir is
6 going to testify. That happened on September 12th.

7 Is this a toss-up question here? What are we doing
8 here?

9 MR. VELAMOOD: Again, I apologize if I am
10 misunderstanding, but my understanding is that we are entitled
11 to the documents only upon Mr. Muir testifying.

12 THE COURT: So your request for the documents is
13 withdrawn, is that right?

14 MR. VELAMOOD: No, it's not withdrawn. But it's
15 withdrawn -- it's not withdrawn. It's made requesting
16 compliance if, as and when Mr. Muir testifies.

17 THE COURT: So then you can explain why you're doing
18 this now. Because I think that's what I was asking about and
19 you said, well, I am not entitled to it until he testifies.

20 MR. VELAMOOD: I think we are not entitled to receive
21 them until he testifies.

22 THE COURT: Why did you wait until now to ask for it
23 under the crime fraud exception? You raised the crime fraud
24 exception in this case last April, no? It was before last
25 April, I think.

HA38TUC4

1 MR. VELAMOOR: We raised the crime fraud exception
2 with respect to documents in the possession of the Buchanan law
3 firm. We made the request for the Muir documents if, as and
4 when Mr. Muir testifies last week.

5 THE COURT: Why did you wait until last week?

6 MR. VELAMOOR: Judge, we were not deciding to wait
7 until any point.

8 THE COURT: You weren't deciding to wait, but you did.
9 So why? It wasn't a decision to wait, but what was it a
10 decision to do? It didn't occur to you, or what?

11 MR. VELAMOOR: I think that's right.

12 THE COURT: Say the words. If that's the truth, say
13 it.

14 MR. VELAMOOR: In the press of trial, we were
15 preparing for the following week, we served the subpoena. We
16 understood Mr. Bath --

17 THE COURT: I know you served the subpoena. I am
18 trying to find out why you waited so long, and I really haven't
19 gotten a straight answer.

20 MR. VELAMOOR: Because in the press of preparing for
21 the other parts of the trial, it did not occur to us to do that
22 until we did it.

23 THE COURT: OK. And when it occurred to you to do it,
24 why didn't it occur to you to raise the crime fraud exception?

25 MR. VELAMOOR: The crime fraud exception occurred to

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1 us because we were thinking through questions that Mr. Bath
2 raised on the record yesterday, in which he pointed out that he
3 thought that privilege issues were going to make it more
4 difficult for him to produce the documents.

5 We sat around. We thought through that issue. It
6 occurred to us in the context of those conversations that we
7 believe we have met the burden for a crime fraud motion, based
8 on the evidence that's been presented at this trial. And based
9 on that evidence, we believe that a crime fraud exception would
10 cover conversations between Mr. Muir and Mr. Schulte and that
11 that would simultaneously also, we thought, mitigate concerns
12 that Mr. Bath raised about having to go through the documents
13 and address a privilege log question with respect to each of
14 the documents.

15 THE COURT: You thought you would make Mr. Bath's life
16 easier by raising the crime fraud exception so he wouldn't have
17 to sort through documents, he could turn them all over. Is
18 that what you're telling me?

19 MR. VELAMOOR: We think we have a valid basis for Mr.
20 Bath to turn over all communications between Mr. Muir and
21 Mr. Schulte relating to the payday lending business because of
22 crime fraud.

23 THE COURT: Right. I accept your answer as honest. I
24 don't know if it's satisfactory. But when you say it didn't
25 occur to you until last week, and then it didn't occur to you

HA38TUC4

1 until yesterday, I accept all that. I don't know that that's a
2 satisfactory answer.

3 Bring our jury in, please.

4 (Continued on next page)

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HA38TUC4

1 (Jury present)

2 DOUGLAS GLENN LANKFORD, resumed.

3 THE COURT: You may continue.

4 MR. RAVI: Your Honor, at this time, with the
5 agreement of counsel for both defendants, the government offers
6 Government Exhibit 4085, which are four directors' meetings on
7 November 6, 2012 by MNE Services, Inc.

8 THE COURT: And you're offering the exhibit?

9 MR. RAVI: Yes.

10 THE COURT: Any objection?

11 MR. GINSBERG: No.

12 THE COURT: It's received.

13 (Government's Exhibit 4085 received in evidence)

14 BY MR. RAVI:

15 Q. Mr. Lankford, before we broke for lunch we were talking
16 about the non-prosecution agreement, correct?

17 A. Yes, sir.

18 MR. RAVI: If we can put up Defense Exhibit 2052.

19 Q. You signed this agreement on behalf of AMG and MNES,
20 correct?

21 A. I did.

22 MR. RAVI: If you would go to the last page, Ms.
23 Grant.

24 Q. That agreement attaches a statement of facts that Mr.
25 Ginsberg put up earlier?

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Lankford - Redirect

1 A. It does.

2 Q. You agree this is all statements in the statement of facts,
3 correct?

4 A. I do.

5 MR. RAVI: If we could just zoom in on paragraphs 2
6 and 3, which was not shown on direct, and just publish that for
7 the jury.

8 MR. GINSBERG: Objection to that. It was shown. It
9 wasn't read.

10 MR. RAVI: Withdrawn.

11 THE COURT: So the comment by Mr. Ravi is stricken.
12 Go ahead.

13 MR. RAVI: No further questions, your Honor.

14 THE COURT: Any redirect?

15 MR. GINSBERG: Yes. Thank you, your Honor.

16 REDIRECT EXAMINATION

17 BY MR. GINSBERG:

18 Q. Mr. Lankford, I just want to go over a few things with you
19 that you were asked on cross-examination.

20 First, you were asked about a lunch meeting at a Mexican
21 restaurant.

22 Do you recall that?

23 A. Yes.

24 Q. You made a statement at the lunch meeting, something to the
25 effect that the money belonged to the tribes, correct?

HA38TUC4

Lankford - Redirect

1 A. Yes, sir.

2 Q. And people at the table got upset?

3 A. Yes.

4 Q. In fact, Mr. Tucker responded to that, correct?

5 A. He did.

6 Q. But in fact, the moneys that were being referred to, a good
7 part of it did belong to the tribe, isn't that correct?

8 A. I believe it did.

9 Q. And the tribes eventually took approximately \$119 million
10 out of the moneys that were in those accounts, according to the
11 annual report in 2013, correct?

12 MR. RAVI: Objection.

13 THE COURT: Objection. Basis.

14 MR. RAVI: Foundation.

15 THE COURT: Well, the witness can answer.

16 Do you know?

17 THE WITNESS: I don't know an exact accounting, your
18 Honor. I know there was a sum of money that the tribe got from
19 this over the total time.

20 THE COURT: But do you have a good faith
21 approximation? Do you know what the number is approximately?

22 THE WITNESS: I do not.

23 THE COURT: Next question.

24 Q. You reviewed the annual report before, correct?

25 A. I did.

HA38TUC4

Lankford - Redirect

1 Q. It had a number which was the total amount that the tribe
2 had in its accounts at the time of that annual report in 2013,
3 correct?

4 A. That was what was reported to us.

5 Q. And you also told us that between that time and 2016, the
6 tribe went out and purchased a number of companies, correct?

7 A. That is correct.

8 Q. You said you didn't have a recollection of how much money
9 the tribe used to purchase those companies, but it was probably
10 in the tens of millions of dollars, correct?

11 A. It was a lot of money.

12 Q. And that money came from money that was in those accounts,
13 correct?

14 A. I would say yes, sir.

15 Q. So it wasn't all Scott Tucker's money. A good portion was
16 the tribe's money, correct?

17 THE COURT: Objection as to form. Define good in your
18 question.

19 Q. The tribe spent a significant portion of the money that was
20 reported in the annual report in 2013 in the purchase of
21 various businesses, correct?

22 A. We spent a large amount of money on buying businesses, yes,
23 sir.

24 Q. That money that they used came from those accounts that you
25 were referring to at that Mexican restaurant lunch meeting,

HA38TUC4

Lankford - Redirect

1 correct?

2 A. I'm not sure. All I know is I was referring to the money
3 that was in the accounts that was being lent.

4 Q. Were there any other accounts that you were aware that had
5 \$119 million in there?

6 A. No.

7 Q. Also, you were asked about a software purchase of BA, is
8 that correct?

9 A. Software usage.

10 Q. Software usage and purchase, correct?

11 MR. GINSBERG: Withdraw the question. I will ask it
12 again.

13 Q. You were asked about software usage, correct?

14 A. Yes, sir.

15 Q. And you were asked about software that you said Scott
16 Tucker owned, correct?

17 A. Yes, sir.

18 Q. And the tribe was using that software in terms of having
19 the payday lending business operate, is that correct?

20 A. Yes, sir, I believe so.

21 Q. But the tribe didn't own the software, is that correct?

22 A. No, I don't believe so.

23 Q. But there came a time where there were discussions about
24 purchasing the software that Scott Tucker owned from Scott
25 Tucker by the tribe, correct?

HA38TUC4

Lankford - Redirect

1 A. Chief Gamble told me that there might be an opportunity to
2 purchase that.

3 Q. And the reason there was going to be a purchase is so that
4 the tribe would then own the software and the tribe could use
5 it however it wished to use without having to pay anything more
6 to Scott Tucker, correct?

7 A. I don't know. I assume yes, we would not have to pay him
8 if we purchased it.

9 Q. But it wasn't the tribe's initially, correct?

10 A. No.

11 Q. And then eventually the tribe entered into a license
12 agreement instead of a purchase so that they could use the
13 software by virtue of a license which they paid Scott Tucker
14 for, correct?

15 A. I believe so.

16 Q. You also mentioned that Scott Tucker controlled the
17 accounts that the money was in that we have been talking about,
18 correct?

19 A. He did.

20 Q. Scott Tucker was given, was he not, by the tribe power of
21 attorney over the accounts, is that correct?

22 A. I don't know.

23 Q. Do you know if Don Brady ever gave him power of attorney?

24 A. I don't know who -- I don't know. I'm assuming that may
25 have happened before I was ever elected.

HA38TUC4

Lankford - Redirect

1 Q. You just don't know, correct?

2 A. I just don't know, sir.

3 Q. In any event, notwithstanding what you said about Scott
4 Tucker controlling the money in the accounts, the tribe was
5 able to take out tens and tens and tens of millions of dollars
6 from those very same accounts for the purchases that we just
7 talked about of the businesses, correct?

8 MR. RAVI: Objection to form.

9 THE COURT: Sustained.

10 Q. Did the tribe take money out of those accounts to make the
11 purchases of the businesses?

12 A. It went towards some of the purchases, yes.

13 Q. And Scott Tucker didn't take the money out and give it to
14 you to buy the businesses, correct?

15 A. No.

16 Q. Somebody from the tribe had authorization to write checks
17 from those accounts and make the purchases, correct?

18 THE COURT: At what point in time Mr. Ginsberg?

19 Q. Between 2013 and 2016.

20 A. Yes. I believe that's correct.

21 Q. You were also asked ultimately if you forfeited \$48 million
22 to the federal government as a result of the non-prosecution
23 agreement, correct?

24 A. That's correct.

25 Q. And the tribe did do that, correct?

HA38TUC4

Lankford - Redirect

1 A. We did.

2 Q. And that was money that the tribe had and the tribe had
3 control over so the tribe could pay that forfeiture, correct?

4 A. It is.

5 Q. And most of that \$48 million had come from the payday
6 lending business, is that fair to say?

7 A. That would be a fair statement.

8 Q. And the tribe, as the government asked, the tribe was
9 permitted to keep \$12 million, correct?

10 A. That's correct.

11 Q. That \$12 million that the tribe kept was in addition to all
12 the other money that the tribe had earned but had already spent
13 on the purchase of those businesses, is that correct?

14 A. I believe so, yes.

15 MR. GINSBERG: I have no further questions.

16 THE COURT: You may step down.

17 (Witness excused)

18 THE COURT: You may call your next witness.

19 Who called the witness?

20 MR. BATH: I did, Judge.

21 THE COURT: You are calling who?

22 MR. BATH: Derek Douglas.

23 THE COURT: Thank you.

24 DEREK DOUGLAS,

25 called as a witness by the Defendants,

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Douglas - Direct

1 having been duly sworn, testified as follows:

2 THE DEPUTY CLERK: State your name and spell it for
3 the record, please.

4 THE WITNESS: Derek Douglas. D-E-R-E-K,
5 D-O-U-G-L-A-S.

6 THE COURT: Mr. Bath, you may inquire.

7 DIRECT EXAMINATION

8 BY MR. BATH:

9 Q. Mr. Douglas, how old are you?

10 A. I am 42.

11 Q. Where do you live?

12 A. Kansas City, Missouri.

13 Q. How long have you lived in Kansas City, Missouri?

14 A. 42 years.

15 Q. Did you attend college?

16 A. I did attend college.

17 Q. Where did you go?

18 A. Springfield, Missouri. Southwestern Missouri State.

19 Q. When did you graduate?

20 A. 1998.

21 Q. What was your degree?

22 A. Accounting.

23 Q. You took your CPA exam?

24 A. I did.

25 Q. When did you take that exam?

HA38TUC4

Douglas - Direct

1 A. In 2008.

2 Q. Are you currently a CPA?

3 A. Yes.

4 Q. You have been an accountant since graduating, but a CPA
5 since '08?

6 A. That is correct.

7 Q. Who do you currently work for?

8 A. I currently work for Miami Nation Enterprises.

9 Q. How long have you worked for them?

10 A. Since April of 2015.

11 Q. I want to go to your work history prior to that.

12 Let's say from 2000 forward, can you give us your work
13 history.

14 A. In 2004 I was working at State Street Bank and Trust.

15 THE COURT: One second.

16 A. From 2005 to 2007 I worked as financial analyst at Sprint.

17 Q. After that?

18 A. 2008 to 2010, I worked for Digital Allied, Inc.

19 Q. What did you do for Digital Allied?

20 A. I was their corporate controller.

21 Q. What is Digital Allied?

22 A. They are a manufacturer of rearview mirrors for law
23 enforcement.

24 Q. When you say you were controller for them, what does that
25 mean?

HA38TUC4

Douglas - Direct

- 1 A. I handled all the books and records for them.
- 2 Q. After Digital Allied, where did you go?
- 3 A. Concorde Career College.
- 4 Q. What did you do for Concorde?
- 5 A. I was their director of accounting.
- 6 Q. What does that mean?
- 7 A. Basically the same thing as controller. I was responsible
- 8 for all of the financial books and records.
- 9 Q. When did you leave Concorde?
- 10 A. In 2012.
- 11 Q. Where did you go when you left Concorde?
- 12 A. I went to AMG.
- 13 Q. Is that the AMG related to the Miami tribe?
- 14 A. That is correct.
- 15 Q. So you still work for the tribe, just in a different
- 16 capacity?
- 17 A. That is correct.
- 18 Q. So in 2012 you were what for AMG?
- 19 A. The corporate controller there.
- 20 Q. How long were you the controller for AMG?
- 21 A. Until April of 2015.
- 22 Q. Approximately three years?
- 23 A. Yes.
- 24 Q. Then after AMG, what did you do?
- 25 A. I worked for Miami Nation Enterprise.

HA38TUC4

Douglas - Direct

1 Q. What was your position initially for MNE?

2 A. The corporate auditor.

3 Q. How long did you hold that position?

4 A. Until March of this year.

5 Q. Then in March of this year what happened?

6 A. Then chief operating officer.

7 Q. For MNE?

8 A. Yes.

9 Q. As chief operating officer for MNE, what are your duties
10 and responsibilities?

11 MR. SCOTTEN: Objection. Relevance. I think we are
12 in 2017 now, your Honor.

13 THE COURT: Sustained.

14 Q. Let's talk about 2012 through '15. 2012 through '13, you
15 were controller for AMG Services?

16 A. That's correct.

17 Q. What did you do for them?

18 A. I again was responsible for all their financial books and
19 records.

20 Q. Did you replace somebody else?

21 A. No, sir.

22 Q. So was anybody the controller before you got there?

23 A. No.

24 Q. It was a newly-created position?

25 A. That is correct.

HA38TUC4

Douglas - Direct

1 Q. Who did the books and records prior to you joining, if you
2 know?

3 A. There were a couple of accounting managers there at the
4 time I arrived, and Gary Patton was there as well.

5 Q. I am going to show you 832. Take a look at that.

6 You can look at it on paper or on the screen.

7 Do you recognize that document?

8 A. Yes, sir.

9 Q. What is it, just generally?

10 A. It is the financial, audited financial statements for AMG.

11 Q. For what year?

12 A. 2011.

13 Q. Have you seen this document before today?

14 A. Yes.

15 Q. As part of your duties and responsibilities?

16 A. Yes, that's correct.

17 Q. Is this document kept in the normal and ordinary course of
18 business for AMG?

19 A. Yes.

20 Q. What types of information is contained in the document?

21 A. It's financial information about AMG.

22 MR. BATH: I offer 832.

23 MR. SCOTTEN: No objection.

24 THE COURT: Received.

25 (Defendants' Exhibit 832 received in evidence)

HA38TUC4

Douglas - Direct

1 MR. BATH: Show that to the jury.

2 BY MR. BATH:

3 Q. We are looking at the first page here, correct?

4 A. Yes.

5 Q. Who would have prepared this document, if you know?

6 A. It would have been the auditors.

7 Q. Who were the auditors at that time?

8 A. John Ober.

9 Q. If we go to the second page, please, what does that
10 generally tell us?

11 A. It's just the index of the financial statements.

12 Q. Page 3. At the top, do we see the Ober you're referring
13 to?

14 A. Yes.

15 Q. They are located in Miami, Oklahoma?

16 A. That is correct.

17 Q. This page we are looking at essentially is information,
18 just background information about what Ober was doing, correct?

19 A. Yes, that is correct.

20 Q. If I could get you to turn to page 6 -- actually, it's page
21 5 on the document.

22 MR. BATH: Next page.

23 Q. Page 5 at the bottom, is that correct, Mr. Douglas? You
24 see at the bottom --

25 A. Yes.

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Douglas - Direct

1 Q. -- the pagination.

2 MR. BATH: Eli, if we can just highlight that first
3 paragraph.

4 Q. AMG Services is the company you worked for when you first
5 started there, correct?

6 A. That is correct.

7 Q. Through about '15?

8 A. Yes.

9 MR. BATH: If we can do the next box, please, Eli.

10 Q. What is the importance of these financial statements in
11 terms of a company? What are done with these documents?

12 A. Sometimes they are used for bank loans, sometimes they are
13 used for investors.

14 Q. How would they be used for bank loans, for instance?

15 A. They are prepared by a third party, a third independent
16 party. So banks tend to trust those more.

17 Q. That independent party being Ober?

18 A. Being Ober, yes.

19 Q. Can we turn to page 9 at the bottom, Mr. Douglas.

20 MR. BATH: If we could highlight, Eli, that first
21 paragraph, "software licensing fee."

22 Q. I am not going to ask you to read that, Mr. Douglas, but
23 essentially this is explaining a licensing agreement with BA
24 Services?

25 A. That is correct.

HA38TUC4

Douglas - Direct

1 Q. Why would this type of information be in the financial
2 papers?

3 A. Because it was a significant transaction.

4 Q. What does that mean in CPA talk?

5 A. It means it's a big transaction for that year.

6 Q. When someone is doing an independent audit, they typically
7 want to highlight large transactions?

8 A. Large transactions.

9 Q. Go two more paragraphs below, "aircraft rental."

10 A. Yes.

11 Q. What is that telling whoever reads the document, generally?

12 A. That there was an aircraft rental by a member of
13 management.

14 Q. Thank you. You can put that document down.

15 Mr. Douglas, I am going to hand you what has been marked as
16 D872.

17 MR. BATH: Would you put that up for Mr. Douglas,
18 please.

19 Q. Do you recognize that document, Mr. Douglas?

20 A. Yes.

21 Q. What is 872?

22 A. It is the audited financials for AMG Services for 2012.

23 Q. Same document we just saw, just for the next year?

24 A. Correct.

25 Q. Kept in the ordinary course of the business for AMG?

HA38TUC4

Douglas - Direct

1 A. Yes.

2 MR. BATH: Offer 872.

3 THE COURT: Any objection?

4 MR. SCOTTEN: No, your Honor.

5 THE COURT: Received.

6 (Defendants' Exhibit 872 received in evidence)

7 MR. BATH: If we can post that for the jury.

8 BY MR. BATH:

9 Q. We are seeing the front page again, correct?

10 A. That is correct.

11 Q. Now, for this audit and the one we saw before, the
12 financial statement, rather, do you know when these were
13 completed?

14 A. I want to say it was sometime in 2013.

15 Q. So it wasn't necessarily done contemporaneous with the
16 year, it's just reporting what happened that year?

17 A. That is correct.

18 Q. You didn't have any involvement preparing either of these
19 documents we have seen?

20 A. I had involvement in getting the numbers.

21 Q. Tell us about that.

22 A. I provided the numbers to the auditors and then I also had
23 to provide some financial backup with it. They do a lot of
24 testing. So they may not look at every transaction, but they
25 will pull out a few of the transactions, whether they be

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Douglas - Direct

1 expenses or balance sheet items, and they test those.

2 Q. When you say you provided the numbers, what does that mean?

3 A. I went through and made sure all the numbers were
4 materially correct.

5 Q. When you say numbers, though, give us somewhat more detail,
6 please.

7 A. The expenses, making sure the revenues were correct,
8 expenses, and then there is called the balance sheet as well.
9 We have to make sure cash is right, fixed assets are right, and
10 then the liabilities are correct as well.

11 Q. So it's more than just sending bank statements along?

12 A. That is correct.

13 Q. How many hours do you think you would have had involved in
14 preparing the information your provided for the outside
15 auditors?

16 A. Usually a typical audit takes about three hours.

17 Q. For you?

18 A. Yes.

19 Q. It may take a lot more.

20 A. Correct.

21 Q. What other documents do you look at to pass on your
22 numbers?

23 A. It depends on what the auditors are asking for, but a lot
24 of time invoices from vendors.

25 Q. I want to go to the third page of this document.

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Douglas - Direct

1 MR. BATH: Please, Eli.

2 Q. Mr. Douglas, essentially, again, we see something from Ober
3 that just gives background about what they are doing here,
4 correct?

5 A. That is correct.

6 MR. BATH: If we can go to the next page, Eli.

7 Can you highlight the box "adverse opinion."

8 Q. This adverse opinion language, is that standard in
9 financial statements?

10 A. Depending on what kind of audit is done, yes.

11 Q. What does that generally mean in the accounting world,
12 "adverse opinion?"

13 A. Usually it means it's not something you can rely a hundred
14 percent on. There is some material information missing.

15 Q. In this paragraph that we are looking at, it says, "It
16 doesn't present fairly the financial position of the Miami
17 Tribe of Oklahoma as of 12/31/12," and it continues.

18 Did I quote that correctly?

19 A. That is correct.

20 Q. Because this isn't an audit for the tribe, is it?

21 A. No. This is just an audit for AMG Services.

22 Q. Just as a tribally-owned company, that's the audit for
23 them?

24 A. Correct.

25 Q. So the auditors are trying to say, listen, this isn't the

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Douglas - Direct

1 tribe's audit, correct?

2 A. That is correct.

3 Q. If we can go to the next page, we see essentially an asset
4 section, correct?

5 A. Yes.

6 Q. And the total assets listed there is what?

7 A. The total assets is \$85,302,934.

8 Q. Essentially if we go above that line, is that where we get
9 that total from?

10 A. Yes.

11 Q. So cash and cash equivalents sort of speaks for itself, is
12 that right?

13 A. Correct.

14 Q. "Due from affiliates," what would that mean?

15 A. I am not sure what that is, but it would be due from
16 affiliated companies. It could be due from the portfolios.

17 Q. And the portfolios would be like, give us an example.

18 A. The lending arms of MNE Services.

19 Q. Then you have accounts receivables listed, correct?

20 A. That is correct.

21 Q. What kind of accounts receivables, what would that
22 generally be for AMG?

23 A. It would be receivables usually from the portfolios.

24 Q. How is that different from due from affiliates?

25 A. There was just some sloppy accounting done in the past.

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Douglas - Direct

1 Q. So we are trying to clean up the accounting?

2 A. That is correct.

3 Q. At some point in time are you familiar whether or not the
4 Miami tribe was charging the Modocs and the Santee for
5 processing loans?

6 A. Was the Miami tribe?

7 Q. Yes.

8 MR. SCOTTEN: Objection. No testimony of Miami tribe
9 doing anything. He is testifying about AMG.

10 MR. BATH: I'm sorry. I will rephrase, Judge.

11 Q. Were you familiar with your time at AMG that AMG was
12 collecting a dollar a loan from the Modocs or the Santee?

13 A. Yes, there were fees per loan.

14 Q. Because AMG was doing the servicing for all three tribes?

15 A. That is correct.

16 MR. SCOTTEN: Objection. Foundation. Tribes. Modoc.
17 None of that is in evidence, your Honor.

18 THE COURT: Lay a foundation for the question.

19 Q. In your job as the controller for AMG, did you become
20 familiar with the business of AMG?

21 A. Yes.

22 Q. Income and expenses and those sorts of things?

23 A. Yes.

24 Q. What kinds of documents would you look at to become
25 familiar with those?

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Douglas - Direct

1 A. Invoices from vendors, invoices to the affiliates.

2 Q. You say AMG invoices, is that what you mean?

3 A. Yes.

4 Q. When you say "affiliates," what do you mean?

5 A. To the portfolios, all the portfolios.

6 Q. Name the portfolios for me.

7 A. Ameriloan, United Fast Cash, US FastCash, Star Cash
8 Processing, Advantage, 500 FastCash, and One Click Cash.

9 Q. You would see the invoices of the charges AMG would send to
10 those portfolios?

11 A. That is correct.

12 Q. And would you be responsible for sending them out?

13 A. Yes.

14 Q. Essentially telling the portfolios what they owed AMG?

15 A. Yes.

16 Q. Were any of those portfolios affiliated with the Modoc
17 tribe?

18 A. Yes.

19 Q. Do you know who the Modoc tribe is?

20 A. Yes.

21 Q. What do you know about who the Modoc tribe is?

22 A. They are an Indian tribe down in Miami, Oklahoma.

23 Q. They have a relationship, to your knowledge, with one of
24 the portfolios?

25 A. They did.

HA38TUC4

Douglas - Direct

1 Q. Which one was that?

2 A. 500 FastCash.

3 Q. What about the Santee Sioux tribe?

4 A. Yes.

5 Q. Did they have an affiliation or a relationship with any of
6 the portfolios?

7 A. Yes. One Click Cash.

8 Q. Were you in charge of sending out invoices from AMG to
9 those tribes, those portfolios?

10 MR. SCOTTEN: Objection. There is no testimony of the
11 invoices going to tribes. They went to portfolios.

12 THE COURT: Did you send any invoices to tribes?

13 THE WITNESS: No.

14 THE COURT: Next question.

15 Q. Where did you send the invoices to? What was the address?

16 A. It was the portfolios.

17 Q. What was their address?

18 A. Somewhere -- one was in Niobrara, Nebraska, and one was in
19 Miami, Oklahoma.

20 Q. Do you know where the Santee Sioux is located?

21 A. Niobrara, Nebraska.

22 Q. And the Modocs are located where?

23 A. Miami, Oklahoma.

24 Q. Do you know if those addresses were the same addresses
25 where you sent the invoices?

HA38TUC4

Douglas - Direct

1 A. I don't remember the exact addresses.

2 Q. Can we go to page, it says page 6 at the bottom of that
3 document, Mr. Douglas.

4 You see the last paragraph at the bottom it says "Revenue
5 recognition - servicing fees"?

6 A. Yes.

7 Q. Would this be related to the invoices you sent out?

8 A. Yes.

9 Q. Can we go to, it says page 9 at the bottom, Mr. Douglas, on
10 the left.

11 Could we go to the "software licensing fee."

12 Would this paragraph again be part of the significant
13 transactions being reported?

14 A. Yes.

15 Q. And the next page, again, there is aircraft rental listed,
16 is that right?

17 A. That is correct.

18 Q. Again, because it's significant?

19 MR. SCOTTEN: Objection. Leading.

20 THE COURT: Rephrase.

21 Q. Why would an aircraft rental be listed in this document?

22 A. Because it's a significant transaction and owned by a
23 member of management.

24 Q. Can we go down to the new agreement section.

25 A. Yes.

HA38TUC4

Douglas - Direct

1 Q. One of the things listed there is the software licensing
2 agreement with BA Services, is that correct?

3 A. That is correct.

4 Q. You weren't a member of the AMG board, were you?

5 A. I was not.

6 Q. Did you attend any of the meetings?

7 A. No, I did not.

8 Q. Were any of the board meetings for MNE or MNES?

9 A. No.

10 Q. Thank you.

11 I am going to show you what has been marked as
12 Defendants' Exhibit 831.

13 Do you recognize that document?

14 A. Yes.

15 Q. What is that document, generally?

16 A. It's the audited financial statements for MNE Services for
17 December of 2011.

18 Q. Would you have any involvement in this document?

19 A. Yes, in providing the numbers to the auditors.

20 Q. Even though you worked for AMG, you would have helped on
21 the MNES document?

22 A. That is correct.

23 Q. So you sort of worked -- you did work on behalf -- for both
24 companies, is that right?

25 A. That is correct.

HA38TUC4

Douglas - Direct

1 Q. Is this 831 kept in the ordinary course of business?

2 A. Yes.

3 MR. BATH: I offer 831.

4 MR. SCOTTEN: No objection.

5 THE COURT: Received.

6 (Defendants' Exhibit 831 received in evidence)

7 MR. BATH: If we can publish that to the jury, please.

8 BY MR. BATH:

9 Q. So this looks like the other two documents, it's just a
10 different company, correct?

11 A. That's correct.

12 Q. It says it's MNE Services, Inc., correct?

13 A. That is correct.

14 Q. What is your understanding of what MNE Services, Inc. does?

15 A. It lended money.

16 Q. How so?

17 A. Online.

18 Q. If we can turn to the third page of that document,

19 Mr. Douglas.

20 Again, this was done by Ober?

21 A. Yes, that is correct.

22 Q. Same as the other two?

23 A. Yes, that is correct.

24 MR. BATH: If we can go two more pages forward, Eli.

25 Q. Mr. Douglas, I am on page, it says 3 on the page.

HA38TUC4

Douglas - Direct

1 A. OK.

2 MR. BATH: If we can blow up the asset section,
3 please.

4 Q. This asset section is for the different company, of course,
5 correct?

6 A. That is correct.

7 Q. Again, though, it lists what the assets of the company are?

8 A. That is correct.

9 Q. And the total assets is what, please.?

10 A. \$161,802,193.

11 Q. And this is as of December 31 of '11, correct?

12 A. That is correct.

13 Q. And the cash and cash equivalents would be moneys in the
14 bank?

15 A. That is correct.

16 Q. Now, this advance and fees receivable, net is about 70
17 million?

18 A. Yes.

19 Q. What is that made up of? How is that calculated?

20 A. That is the loan balances outstanding.

21 Q. What does that mean?

22 A. That was all of the loan balances that were outstanding as
23 of December 31 that was still receivable by the company.

24 Q. So if a loan is paid to somebody, a customer, \$500, until
25 that loan is paid back, that \$500 goes into the advance and

HA38TUC4

Douglas - Direct

1 fees receivable?

2 A. That is correct.

3 Q. What about the interest, is that included in that number or
4 is that just the \$500?

5 A. That is included in there as well.

6 Q. How do you calculate that interest?

7 A. It was actually done by a third party in the software and
8 they had an access database that they had written.

9 Q. That's a number you passed on, you didn't calculate?

10 A. That is correct.

11 MR. BATH: If you can go to the next page for me, Eli.

12 Q. We have portfolio revenues. 274,852,630 is the top number
13 correct?

14 A. That is correct.

15 Q. What is the credit loss? What does that mean?

16 A. That was for bad loans, loans that weren't paid back.

17 Q. And that left a total revenues there for MNE Services?

18 A. Yes.

19 Q. 198?

20 A. 198 million.

21 MR. BATH: Then if we go to the next page, and just
22 blow up those first two paragraphs, please, Eli.

23 Q. I am not going to ask you to read this. This is
24 essentially the auditor telling somebody who reads it what MNES
25 is about, correct?

HA38TUC4

Douglas - Direct

1 A. Yes, that is correct.

2 MR. BATH: Can we go to page 8, please, Eli.

3 It's 8 at the bottom of the page.

4 If we can highlight the related transactions and
5 services paragraph.

6 Q. Mr. Douglas, what does "related party transactions" mean?

7 A. It would be transactions with, it could be any member of
8 management, it could be with a sister company.

9 Q. In this case it's describing AMG, correct?

10 A. That is correct.

11 Q. Which obviously is also a tribal corporation, correct?

12 MR. SCOTTEN: Objection. Leading.

13 THE COURT: I will allow it this time, but, Mr. Bath,
14 please.

15 MR. BATH: Yes, sir. Thank you.

16 Go to the last line and just highlight that last line,
17 Eli, of that second paragraph.

18 Q. What does that sentence mean, Mr. Douglas, if you know?

19 A. AMG's expenses, they basically had all the employees in the
20 organization.

21 Q. It says, "AMG receives revenues from other tribes for its
22 management services."

23 Did I read that correctly?

24 A. Yes.

25 Q. What does that mean?

HA38TUC4

Douglas - Direct

1 A. The Modocs and the Santees also paid AMG.

2 MR. BATH: If we can go to the last paragraph on that
3 page.

4 Can we catch the header above that. I'm sorry.

5 Q. This is talking about the software licensing, correct?

6 A. That is correct.

7 Q. Thank you.

8 I am going to hand you what has been marked as Defendants'
9 Exhibit 871.

10 Mr. Douglas, do you recognize that document?

11 A. Yes.

12 Q. What is that document?

13 A. It is the audited financial statements for MNE Services for
14 2012.

15 Q. You're familiar with the document?

16 A. Yes.

17 Q. Kept in the ordinary course by MNE Services and the tribe?

18 A. Yes.

19 MR. BATH: Offer 871.

20 MR. SCOTTEN: No objection.

21 THE COURT: Received.

22 (Defendants' Exhibit 871 received in evidence)

23 BY MR. BATH:

24 Q. 871 is essentially the next year from the document we just
25 saw, correct?

HA38TUC4

Douglas - Direct

1 A. That is correct.

2 Q. And it substantially has the same types of information,
3 doesn't it?

4 A. That is correct.

5 Q. For instance, if we go to page 4, 4 at the bottom, we have
6 the asset section as of December 31 of '12, correct?

7 A. That is correct.

8 Q. Again, the listing of the cash -- the listing of the assets
9 are very similar in terms of the categories that we saw before,
10 right?

11 A. Yes.

12 Q. And the total assets now are 184 million?

13 A. Yes.

14 MR. BATH: Go to page 10 of this document, please,
15 Eli.

16 (Continued on next page)

17

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Ha3Wtuc5

Douglas - Direct

1 BY MR. BATH:

2 Q. And there's a paragraph, Mr. Douglas, that says due from
3 and to affiliates. Do you see that?

4 A. Yes.

5 Q. What does, generally, due from and to affiliates mean?

6 A. Again, due the sister companies or a closely related party.

7 Q. OK. And closely related party doesn't necessarily mean
8 it's owned by one company, does it? Or does it?

9 A. No. That is correct.

10 Q. What, generally, is this paragraph telling us?

11 A. That on December 31, 2012, the company was owed 8.1 million
12 from AMG and 3.9 million from Red Cedar and then 1.1 million
13 from OneClickCash.

14 Q. And the next sentence tells what AMG owes --

15 A. Yeah.

16 Q. -- to Red Cedar and OneClickCash?

17 A. That is correct.

18 MR. BATH: That's all I have for that. Thank you.

19 Q. I'm going to show you what's been marked as defendants'
20 963. Do you recognize that document?

21 A. I do not recall it.

22 Q. All right. Do I understand that you don't recall it, or
23 you've never seen it?

24 A. I don't recall it.

25 Q. OK. Either way, is that right?

Ha3Wtuc5

Douglas - Direct

1 A. Yes.

2 Q. Let me show you, let me ask you a question before I show
3 you this document, and that is, what is a cash balance report?

4 A. This looks like --

5 Q. No, no. I'm sorry. Without looking at that document --

6 A. Oh.

7 Q. -- generally, what's a cash balance report?

8 A. I guess a cash balance report would be a report that would
9 say how much cash you had on hand.

10 Q. Were those kinds of reports done for MNE Services?

11 A. I believe so, yes.

12 Q. Were you involved in doing that?

13 A. I believe probably my department had some involvement in
14 it.

15 Q. And how many people did you have in your department?

16 THE COURT: At what point in time?

17 MR. BATH: I'm sorry, Judge.

18 Q. You started there in '12, is that right?

19 A. That is correct.

20 Q. At what point did you have the department?

21 A. In 2012.

22 Q. How many people did you have working there?

23 A. There was, I think, a total of eight.

24 Q. And how many CPAs?

25 A. Including me?

Ha3Wtuc5

Douglas - Direct

1 Q. Uh-huh.

2 A. Just one.

3 Q. And the others had degrees or what kinds of --

4 A. Yes, most of them had degrees.

5 Q. All right. What kinds of work would your department be
6 doing?

7 A. Accounting.

8 THE COURT: Again, you're talking about in 2012?

9 MR. BATH: Yes, sir. Thank you, Judge.

10 Q. In 2012, what kind of work would your eight employees be
11 doing?

12 A. Accounting.

13 Q. Was that full time?

14 A. Yes.

15 Q. Where were you physically located?

16 A. Overland Park, Kansas.

17 Q. OK. And the accounting work you oversaw, but you may not
18 have had involvement in a particular document?

19 MR. SCOTTEN: Objection. Leading.

20 THE COURT: Sustained. Rephrase it, please.

21 Q. Were multiple documents produced by the department?

22 A. Yes.

23 Q. Did you necessarily have involvement in producing every one
24 of those documents?

25 A. No.

Ha3Wtuc5

Douglas - Direct

1 Q. And you may not have seen all the documents?

2 A. That is correct.

3 Q. Fair enough. I'm going to show you what's been marked as
4 defendants' 1081, and I'll take that other one back from you.

5 Do you recognize that document?

6 A. Looks like the same thing you just provided.

7 Q. Well, my question is, do you recognize it, and if you
8 don't, you don't.

9 A. No.

10 Q. All right. In 2012 and '13, cash balance reports, just
11 generally, without looking at that document, what's the cash
12 balance tell you?

13 A. How much cash is on hand.

14 Q. All right. And were those kinds of reports done for AMG?

15 A. Most likely, yes.

16 Q. And how about MNES?

17 A. Yes.

18 Q. OK. And just generically, were you involved in working up
19 those cash balance reports in '12 and '13?

20 A. I had access to the bank accounts.

21 Q. But that doesn't mean necessarily you worked up those
22 reports?

23 A. That is correct.

24 Q. Somebody in your department in '12 and '13 might have done
25 that?

Ha3Wtuc5

Douglas - Direct

1 A. Sure.

2 Q. OK. I'm going to show you one more and see if you
3 recognize it. And I'll take that one back from you.

4 What is that exhibit number, please?

5 A. 1190.

6 Q. Right. Do you recognize that?

7 A. No.

8 Q. I'm going to show you 2802 and see if you recognize that.
9 I'll take that one back. Do you recognize 2802?

10 A. No.

11 Q. Do you know if you've ever seen a document like that
12 before?

13 A. It looks familiar.

14 Q. Back to the cash balance reports, would those be kept in
15 the ordinary course of business, as part of your business?

16 A. Normally we would do a bank reconciliation every month as
17 part of our closing process.

18 Q. What would that do, the bank reconciliation?

19 A. It would reconcile our bank accounts with what our cash
20 account said on the general ledger.

21 Q. And those are different than the cash balance reports?

22 A. That is correct.

23 Q. What's the purpose of running those reconciliation reports?

24 A. To see what checks you have outstanding, is the main
25 purpose of it; make sure that your bank balances, there's no

Ha3Wtuc5

Douglas - Direct

1 fraudulent activity going on.

2 Q. We have had testimony that, from the period of '13 to '15,
3 the tribe bought some businesses. Are you familiar with any
4 businesses that were purchased in that time period?

5 A. Yes, there were.

6 Q. Were you involved in that at all?

7 A. I was involved in one business.

8 Q. OK. And which business were you involved in?

9 A. There was a cabinet company down in San Antonio that was
10 purchased.

11 Q. San Antonio, Texas?

12 A. That's correct.

13 Q. What was your involvement?

14 A. I went down there to do some due diligence.

15 Q. Why did you do due diligence?

16 A. Just to make sure it was a valuable -- or a company that we
17 could use to make money.

18 Q. Did you have any other involvement in the purchase of the
19 company?

20 A. No. No, sir.

21 Q. You weren't involved in the negotiations of the sale
22 transaction, or anything like that?

23 A. No.

24 Q. Do you know what year that would have been?

25 A. That was April of 2015.

Ha3Wtuc5

Douglas - Cross

1 Q. Do you know who would have been involved on behalf of the
2 tribe for the sale?

3 A. It was Joe Frazier and David Hayes.

4 Q. OK. I'm going to take that document back from you.

5 MR. BATH: Judge, if I could just have one second.

6 THE COURT: All right.

7 MR. BATH: That's all I have. Thank you so much.

8 THE COURT: All right. Mr. Ginsberg or Mr. Roth, any
9 cross-examination?

10 MR. GINSBERG: No, your Honor.

11 MR. ROTH: No, your Honor.

12 THE COURT: Government.

13 MR. SCOTTEN: Thank you, your Honor.

14 CROSS-EXAMINATION

15 BY MR. SCOTTEN:

16 Q. Good afternoon, Mr. Douglas. How are you?

17 A. Good. How are you?

18 Q. Good. Thank you. You started at --

19 MR. SCOTTEN: Hold on a second. This microphone is
20 always too low for me.

21 Q. You started at AMG in April of 2012, right?

22 A. That is correct.

23 Q. You remember the exact day you started, don't you?

24 A. Yes, sir.

25 Q. Why do you remember that exact day?

Ha3Wtuc5

Douglas - Cross

1 A. That was the same day the FTC filed charges against AMG.

2 Q. That's the day you were coming in to fix the books, the AMG
3 FTC charges?

4 A. That is correct.

5 Q. And fair to say over the course of the next few years, you
6 became pretty familiar with the books?

7 A. Yes.

8 Q. And you just answered a lot of questions from Mr. Bath
9 about tens or even hundreds of millions of dollars that were
10 there, right?

11 A. Yes.

12 Q. And it's fair to say that as you sit here today, you have
13 no idea who that money belonged to when you got there?

14 A. No. Well, I knew it belonged to AMG.

15 Q. Right, but whether that belonged to Scott Tucker or the
16 Miami tribe or somebody else, you have no opinion on?

17 A. I do not have an opinion.

18 Q. And that's despite reviewing all these books, right?

19 A. That is correct.

20 Q. And when you got there, Scott Tucker was in charge, right?

21 A. Yes.

22 Q. He was your boss' boss?

23 A. Correct.

24 Q. Your boss was Gary Patten?

25 A. That is correct.

Ha3Wtuc5

Douglas - Cross

1 Q. And Scott Tucker had signature authority on all these
2 accounts we've been talking about, right?

3 A. Yes, when I first got there.

4 Q. When you got there. That was changed later?

5 A. Yes.

6 Q. And he directed a lot of payments to be issued, right?

7 A. Yes.

8 Q. Expenses were also brought in for things he did, right?

9 A. Yes.

10 Q. Sometimes on handwritten notes or even Post-its?

11 A. Yes.

12 Q. Direct that the company pay for things for Scott Tucker on
13 these handwritten notes?

14 A. Yes.

15 Q. When you got there, Timothy Muir was the general counsel,
16 right?

17 A. Yes.

18 Q. And he brought bills to your department also to be paid,
19 right?

20 A. Yes.

21 Q. In particular, he brought bills for payments to law firms,
22 right?

23 A. That is correct.

24 Q. He directed the payment of millions of dollars, in
25 particular, to a firm called Fredericks Peebles & Morgan,

Ha3Wtuc5

Douglas - Cross

1 right?

2 A. Correct.

3 Q. And particularly to an attorney there named Conly Schulte,
4 right?

5 A. Correct.

6 Q. And you also learned when you got there that Tim Muir had
7 been involved in the accounting previous to you getting there,
8 correct?

9 A. Correct.

10 Q. You learned that he had been directing alterations to the
11 books?

12 A. Yes, him and Brett Chapin.

13 Q. Who was Brett Chapin?

14 A. He was a tax attorney they had hired to help with the
15 books.

16 THE COURT: Who do you mean by "they"?

17 THE WITNESS: AMG.

18 Q. So, are you familiar with an expression in the accounting
19 business, something along the lines of "crap in, crap out"?

20 A. Yes.

21 Q. And that means that if the inputs are bad, the outputs are
22 bad, right?

23 A. That is correct.

24 Q. An honest accountant like yourself could work hard on
25 numbers, but if the numbers you start with are inaccurate, your

Ha3Wtuc5

Douglas - Cross

1 result is going to be bad no matter how hard you work, right?

2 A. That would be correct.

3 Q. And so if you're starting with cooked books, you can't
4 reach an honest result absent somebody telling you how to fix
5 those books?

6 A. Correct.

7 Q. You were asked a few times -- well, actually, let's do
8 this. And you're not here to vouch for the accuracy of any of
9 these Ober reports, correct?

10 A. The Ober reports, yeah, they're a little more accurate,
11 because they were audited.

12 Q. The calculations are accurate, the numbers you fed into
13 them you're not here to vouch for?

14 A. Sure.

15 MR. SCOTTEN: Could we pull up, I can't remember what
16 the first defense exhibit was. Was it 831?

17 Q. Let's do 831.

18 A. OK.

19 MR. SCOTTEN: Could we go to the last page.

20 Q. And you see here this is the conclusion of the report, and
21 it's talking about the policies and procedures and risk
22 management in place at MNE Services for the year-end reporting,
23 right?

24 A. That is correct.

25 MR. SCOTTEN: Can we just blow up the line that says

Ha3Wtuc5

Douglas - Cross

1 "effect."

2 Q. Can I ask you to read that? It's very short.

3 A. "MNES is susceptible to incorrect financial reporting,
4 misappropriation of assets and possible fraudulent activities
5 that may not be discovered in the normal course of business."

6 Q. All right.

7 MR. SCOTTEN: Let's take a look at 871.

8 Q. This is going to be the Ober report for the next year?

9 A. Correct.

10 Q. This is the year after what we just looked at?

11 A. Correct.

12 MR. SCOTTEN: Can we go to the last page. And can we
13 blow up "effect."

14 Q. And again it says that MNES is still susceptible to
15 incorrect financial reporting, misappropriation of assets and
16 possible fraudulent activities that may not be discovered in
17 the normal course of business, is that right?

18 A. That is correct.

19 MR. SCOTTEN: Let's go to the next defense exhibit. I
20 think that's 832.

21 Q. And now we're looking at AMG, right?

22 A. That is correct.

23 Q. And this is for the 2011 year?

24 A. Yes.

25 MR. SCOTTEN: Let's go to the last page, and we can

Ha3Wtuc5

Douglas - Cross

1 look at "effect" for AMG.

2 Q. So this is a different company, 2011?

3 A. Correct.

4 Q. Different than MNES that we just looked at?

5 A. Correct.

6 Q. And again, it says it's susceptible to incorrect financial
7 reporting, misappropriation of assets and possible fraudulent
8 activities that may not be discovered in the normal course of
9 business, correct?

10 A. That is correct.

11 Q. By the way, in case it's not a common term, what does
12 "misappropriation of assets" mean?

13 A. It could be taking a piece of equipment home, cash --

14 Q. Writing yourself a check out of the company's books?

15 A. Yes.

16 MR. SCOTTEN: All right. Let's go to 872.

17 Q. And this is now for the second year of that company, right;
18 second year that you were there, 2012?

19 A. Yes, that's correct.

20 MR. SCOTTEN: Let's go to the last page.

21 Q. And there's no change here, right; still talking about
22 incorrect financial reporting, misappropriation of assets and
23 possible fraudulent activities?

24 A. Yes.

25 MR. SCOTTEN: All right. We can take that down.

Ha3Wtuc5

Douglas - Cross

1 Q. So the defense attorney asked you a bunch of times about
2 tribal this and tribal that, right? You remember a lot of
3 questions where "tribe" was worked in?

4 A. Yes.

5 Q. You came to believe that a tribe was involved initially --
6 you were initially told a tribe owned this when you
7 interviewed, correct?

8 A. That is correct.

9 Q. And then, Tim Muir told you that when you got there, right?

10 A. That is correct.

11 Q. You don't have any independent expertise in accounting to
12 figure out whether a tribe was involved; you didn't see tribes,
13 did you, when you got there?

14 A. No, I did not.

15 Q. When you looked through the books when you got there, you
16 didn't see anything in the books that confirmed or made you
17 say, Oh, Tim Muir must be right when he told me a tribe owns
18 this, did you?

19 A. Other than payments to MNE Services or MNE and the Modoc
20 tribe and the Santee Sioux tribe.

21 Q. Right. In fact, when you got there, you saw that a lot of
22 those payments had been classified as expenses, right?

23 A. That is correct.

24 Q. An expense isn't consistent with ownership, right?

25 A. That is correct.

Ha3Wtuc5

Douglas - Cross

1 Q. You don't regard the owner of the business as an expense,
2 right?

3 A. That is correct.

4 Q. Owners are paid distributions?

5 A. Yes.

6 Q. And they own the business, they get a distribution of
7 profits?

8 A. Yes, that is correct.

9 Q. And you saw that someone had been going back into the books
10 and changing that over to now say distributions?

11 A. Yeah, there was a Sqar Milner study that was ongoing when I
12 arrived.

13 Q. And they were changing it over to say, Well, let's not have
14 it look like the tribe doesn't own this, let's make it look
15 like the tribe did own it?

16 A. I don't know what they said to re-class the distributions.

17 THE COURT: One second. You referred to a something
18 Milner report.

19 THE WITNESS: Sqar Milner.

20 THE COURT: Can you spell that first name.

21 THE WITNESS: It's S-Q-A-R.

22 THE COURT: Thank you.

23 BY MR. SCOTTEN:

24 Q. Right. Nobody told you why these changes were being made?

25 A. That is correct.

Ha3Wtuc5

Douglas - Cross

1 Q. You could just see that they were being made?

2 A. That is correct.

3 Q. As an accountant you could tell it was changing the
4 appearance from one of an expense to make it look like there
5 was ownership?

6 A. Correct.

7 Q. I want to ask you a bit about the money flowing out. We
8 talked a bit about money flowing out to certain entities that
9 you were told were associated with the tribe, correct?

10 A. Yes.

11 Q. And I believe Mr. Bath showed you entries in reports for
12 aircraft owned by a member of the management, is that right?

13 A. That is correct.

14 Q. And that was Scott Tucker, right?

15 A. That is correct.

16 Q. Those were \$400,000 payments going to the private jet
17 leasing company owned by Scott Tucker, right?

18 A. That is correct.

19 Q. And those weren't the only moneys going out to Scott
20 Tucker, were they?

21 A. No.

22 Q. He was getting paid a salary of over a million dollars?

23 A. Correct.

24 Q. And by the way, Blaine Tucker was also?

25 A. Correct.

Ha3Wtuc5

Douglas - Cross

1 Q. And so was your boss, Gary Patten?

2 A. Yes.

3 Q. But Scott Tucker was also getting huge payments directed to
4 Levelfive racing company, was he not?

5 A. Yes.

6 Q. And then there were even larger payments going to BA
7 Services, right?

8 A. Yes.

9 Q. And you were asked about some of those payment, right?

10 A. Yes.

11 THE COURT: Objection as to form, as to statements and
12 questions using the word "huge." Please be more specific.

13 MR. SCOTTEN: Absolutely, your Honor.

14 Q. In 2012, so the 2011 report, \$64 million to BA Services?

15 A. I believe that was correct.

16 Q. And then in the next year, \$100 million to BA Services, a
17 little bit more, right?

18 A. Yes.

19 Q. And you knew that BA Services was a Scott Tucker property,
20 right?

21 A. That is correct.

22 Q. Now, I want to ask you a little bit now about when the
23 Miami tribe left. You essentially came in -- well, the Miami
24 tribe asked you to help get them out of this business, correct?

25 A. That is correct.

Ha3Wtuc5

Douglas - Cross

1 Q. And you helped wind down their role in payday lending?

2 A. Yes.

3 Q. And when the tribe left, it took with it essentially the
4 money that was found in accounts with their name on it, right?

5 A. That is correct.

6 Q. If the Miami's name was on the account, they wanted to take
7 that money with them?

8 A. Yes.

9 Q. And when they left, as far as you could tell, the payday
10 lending business just kept on going, right?

11 A. Yes.

12 Q. You were working in the same Overland Park office of AMG,
13 right?

14 A. That is correct.

15 Q. And the Miami gets out and takes the money in the accounts
16 with their name on it with them, right?

17 A. Yes.

18 Q. Scott Tucker's still there in the corner office, right?

19 A. Yes.

20 Q. Natalie Dempsey's replaced Blaine Tucker as day-to-day
21 manager?

22 A. Yes.

23 Q. She works for Scott Tucker?

24 A. Yes.

25 Q. Tim Muir's still there, and his office being general

Ha3Wtuc5

Douglas - Cross

1 counsel, right?

2 A. Yes.

3 Q. The Miami are gone, the payday lending's still going on,
4 right?

5 A. Yes, as far as --

6 Q. Same building in Overland Park, Kansas?

7 MR. GINSBERG: Your Honor, I think we need a time
8 period.

9 THE COURT: Yes, I agree.

10 BY MR. SCOTTEN:

11 Q. So this is when the tribe gets out of the business,
12 correct, and that's in around 2014 that the Miami's leaving?

13 A. That's when they started to wind down the business, 2014.

14 MR. GINSBERG: I would object to this answer and all
15 the prior answers that didn't have dates in them based on what
16 your Honor indicated before.

17 THE COURT: Yes. Go ahead, Mr. Scotten.

18 MR. SCOTTEN: Your Honor, either it is or is not
19 relevant what happened afterwards. There's been a lot of
20 questions asked about the tribe getting money after the period
21 of the indictment. It either all comes out or it all stays in.

22 MR. GINSBERG: I would request a sidebar if we're
23 going to have a speech.

24 THE COURT: No. You're going to fix the dates.

25 MR. SCOTTEN: Absolutely, your Honor.

Ha3Wtuc5

Douglas - Redirect

1 Q. When did the Miami tribe start to wind down, you said 2014?

2 A. Yes, in 2014.

3 Q. And by when are they completely out?

4 A. April of 2015.

5 Q. And the fact that they --

6 A. But they never completely -- there are ongoing cases.

7 Q. There are still multiple litigations as a result of it?

8 A. That's correct.

9 THE COURT: Ladies and gentlemen, as I told you
10 before, the conspiracy charged in the indictment is alleged to
11 have come to an end in August 2013. You may not consider any
12 evidence of what transpired after that date as evidence of the
13 charged crimes.

14 MR. SCOTTEN: I think that's all I have, your Honor.
15 Let me just check.

16 Nothing further, your Honor.

17 THE COURT: Thank you.

18 Redirect.

19 MR. BATH: Thank you, Judge.

20 REDIRECT EXAMINATION

21 BY MR. BATH:

22 Q. Mr. Douglas, am I correct that when you're winding things
23 down for the Miami, Tim Muir helped you with that?

24 A. I don't think he helped with that too much. I don't know.

25 Q. Do you know?

Ha3Wtuc5

Douglas - Redirect

1 A. No.

2 Q. OK. So when you say winding things down and who was
3 present and who's not present, you don't know what everybody's
4 doing there, do you?

5 A. Right.

6 Q. OK. You talked about, I think you said Tim and Brett
7 Chapin made alterations to the books; that was your testimony?

8 A. They were -- when I got there, the two accounting managers
9 said they had directed them to make certain entries.

10 Q. OK. Is an entry different than alteration?

11 A. Yes.

12 Q. Sounds different, and how is it different?

13 A. An entry is just going in and putting in what, what you're
14 told.

15 Q. All right. Is there something improper about an accounting
16 entry?

17 A. I mean, there's nothing improper about it unless it's done
18 wrong.

19 Q. OK. And you're not saying they were done wrong, are you?

20 A. It was pretty sloppy accounting when I got there.

21 Q. OK, but we're not talking about what the entries, and you
22 said Timothy Muir and Brett Chapin made -- are you saying they
23 were wrong on those entries, or are you just giving examples?

24 A. Just giving examples.

25 Q. OK. You're not here to give us any specific examples of

Ha3Wtuc5

Douglas - Redirect

1 something Mr. Muir did wrong with the books, are you?

2 A. No.

3 Q. And Chapin, who is Mr. Chapin?

4 A. He was just a tax attorney when I got there. He was still
5 around for a little bit, but not too often.

6 Q. He was not employed by the Muir firm, or was he?

7 A. Not that I'm aware.

8 Q. So he was an independent lawyer and accountant, is that
9 right?

10 A. That is correct.

11 Q. And he was working for Mr. Tucker?

12 A. Yes.

13 Q. All right. So when you were questioned earlier about them
14 doing things together, meaning Muir and Chapin, they weren't
15 doing things together, to your knowledge, were they?

16 A. Not that I'm aware of.

17 Q. OK. Chapin may have done some things, and then separately,
18 there may have been entries Mr. Muir required, is that right?

19 A. That may be correct.

20 Q. Or that Mr. Muir asked for, but you weren't involved in
21 those entries, were you?

22 A. No, I was not there at the time.

23 Q. So when you're talking about alterations made by these two
24 people, are you saying you're testifying about things you were
25 told about or things you knew about?

Ha3Wtuc5

Douglas - Redirect

1 A. Things that I was told about.

2 Q. OK. Who told you about that?

3 A. Again, the two accounting managers --

4 Q. OK.

5 A. -- at AMG when I arrived.

6 Q. All right. And who were they?

7 A. Mark -- Gary Hamilton. I can't think of Mark's last name
8 off the top of my head.

9 Q. So if we wanted to know whether or not there was really
10 something improper about those entries or alterations, we would
11 have to hear from them, wouldn't we?

12 MR. SCOTTEN: Objection.

13 THE COURT: If you know. Do you know the answer to
14 that question?

15 THE WITNESS: I'm not sure.

16 BY MR. BATH:

17 Q. All right. Well, you don't know, do you?

18 A. I don't know.

19 Q. We know that you're not the person to tell us anything
20 about that, fair to say?

21 A. Yes.

22 Q. OK. You were shown financial statement, that last page,
23 and if you need to look at any of them, tell me and I'll put
24 them up. But you were asked about the word "effect," remember
25 that?

Ha3Wtuc5

Douglas - Redirect

1 A. Yes.

2 MR. BATH: In fact, let's put that up, Eli. Put the
3 last page of 872 up for Mr. Douglas.

4 Q. So this last page, it starts -- at the top, it says
5 accounting policies and procedures and risk management, does it
6 not?

7 A. Yes.

8 Q. Then we have all these definitions, do we not?

9 A. That is correct.

10 Q. One of those definitions was effect, was it not?

11 A. Yes.

12 Q. And are these definitions used typically by auditors when
13 they do these reports?

14 A. Yes.

15 Q. OK, so you don't know -- so you've seen these before in
16 other work papers?

17 A. Yes.

18 Q. OK. Including the word "effect"?

19 A. Yes.

20 Q. All right. And the definition of effect?

21 A. Yes.

22 Q. All right. So that's the standard sort of cover-yourself
23 language that auditors use?

24 A. Most generally, yes.

25 MR. BATH: That's all I have. Thank you.

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Cohen - Direct

1 THE COURT: All right. You may step down, sir.

2 (Witness excused)

3 THE COURT: Ladies and gentlemen, let's take our
4 midafternoon break. Please do not discuss the case among
5 yourselves or with anyone. We'll be back in five minutes, ten
6 minutes.

7 Sir, you can leave all the papers right there. Thank
8 you.

9 (Jury not present)

10 THE COURT: See you in ten minutes.

11 (Recess)

12 THE COURT: Bring our jury in, please.

13 MR. ROTH: Judge, may I seat the witness, our next
14 witness?

15 THE COURT: Yes.

16 (Jury present)

17 THE COURT: The defense may call its next witness.

18 MR. ROTH: Thank you, your Honor. The defense calls
19 Clifford Cohen.

20 CLIFFORD COHEN,

21 called as a witness by the Defendants,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. ROTH:

25 Q. Good afternoon, Mr. Cohen.

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Cohen - Direct

1 A. Good afternoon.

2 Q. Where do you reside, sir?

3 A. In Leawood, Kansas.

4 Q. Where were you born, sir?

5 A. I was born in Kansas City, Missouri.

6 Q. How old are you, sir?

7 A. 68.

8 Q. Tell the members of the jury, if you would, sir, your
9 educational background.

10 A. I have a B.S. in education, 1970, from the university of
11 Kansas, and I have a J.D., a law degree, from University of
12 Missouri at Kansas City in 1974.

13 Q. When you got out of law school, could you just take us
14 through your professional career, your background, sir?

15 A. I practiced with a small general practice firm in Kansas
16 City, Kansas, for a year and a half, and in September of '75, I
17 was appointed an assistant public defender in Kansas City,
18 Missouri. In January of '77, I became chief public defender in
19 Kansas City; stayed in that position through the end of 1980;
20 went into private practice and have been with two firms, but
21 self-employed since 1980.

22 Q. And what areas of expertise did you develop over that
23 course of your professional training and practice?

24 A. I think I had expertise in criminal law, which I did
25 primarily for 12 years. After that I did commercial trial work

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Cohen - Direct

1 and general corporate law, and in the last eight years, I've
2 changed my focus to education law. I primarily represent
3 students, teachers and professors in educational disputes.

4 Q. Have you served on any professional committees?

5 A. Yes. I've been an investigator for the Kansas disciplinary
6 system for 30 years, through the county ethics and grievance
7 committee. That's been my primary bar activity.

8 Q. Mr. Cohen, do you know Scott Tucker?

9 A. I do.

10 Q. And was he a client of yours?

11 A. Yes.

12 Q. Can you identify him in the courtroom today?

13 A. Scott's got a red tie on. He's right there.

14 THE COURT: Identification noted.

15 MR. ROTH: Thank you.

16 Q. And when was the last time you saw Mr. Tucker?

17 A. Well, before yesterday in the hallway, I had seen him
18 roughly a year ago in his attorney's office in Kansas City,
19 Missouri.

20 Q. When was the first time he was a client of yours, sir?

21 A. My best recollection is 1998.

22 Q. And what type of matters were you handling for him then,
23 sir?

24 A. A variety of commercial law, consumer law advice; some real
25 estate transactions; some HR-personnel issues. I was kind of a

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Cohen - Direct

1 generalist for him. Whatever he needed that I could help him
2 with, I did.

3 Q. Did there come a time, sir, when he asked you for legal
4 help or advice in regard to a business model concerning tribes
5 lending?

6 A. Yes, sir.

7 Q. And do you recall exactly when that was, more or less?

8 A. I have reviewed my billing records to refresh my
9 recollection, and so based on that, I believe that was August
10 of 2003.

11 Q. And at that time, just in general terms, what did he tell
12 you about his business plan?

13 A. He told me that he was interested in partnering with
14 American Indian tribes, who he had been advised had sovereign
15 immunity, and that as a partner with them, he believed he also
16 could have sovereign immunity, and he provided me a copy of a
17 letter from an attorney in Portland, Oregon, who had given him
18 this advice.

19 Q. If I could stop you for a moment, based on your discussions
20 with him, did you compose a letter of intent?

21 A. Yes.

22 MR. ROTH: I'd ask that the witness be shown
23 Government Exhibit 208, that's in evidence. And you could flip
24 to the last page, if you could, Eli. I think that's a
25 three-page document.

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Cohen - Direct

1 Q. Could you summarize, starting at the second page, the
2 general terms of the proposed agreement?

3 A. Now, this is a letter that I wrote for Mr. Tucker to sign
4 that outlined the key terms of a partnership, for lack of a
5 better word, between a Tucker enterprise that actually hadn't
6 been incorporated yet, but that was part of the plan, to
7 incorporate a specific corporation to do business with the
8 Kickapoo tribe or its tribal corporation, and so these eight
9 items, very quickly, that the tribe would --

10 Q. If you could just give the general headings of those.

11 A. Yeah, tribal entity, National Money Service subsidiary.

12 (Continued on next page)

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Cohen - Direct

1 Q. You were referring to what there?

2 A. Well, that would be the specific new entity, which I think
3 ended up being Universal Management Services; that would be a
4 subsidiary of National Money Service, Inc.

5 Q. Go on through the points, just briefly.

6 A. So the tribe and the tribal entity will not be required to
7 provide investment capital, Mr. Tucker's company was going to
8 do that.

9 The fee agreement was a minimum fee of \$20,000 for a
10 month.

11 The duration of the agreement was five years at the
12 outside, but it was going to be cancelable by either party
13 within 90 days' notice.

14 Next, the duties of the Kickapoo tribe. It must
15 incorporate and provide office space on tribal land, designate
16 at least two individuals to serve as officers and be
17 responsible for working with Universal Management Services.
18 And then kind of a general promise that the tribe would agree
19 to do all things reasonably necessary to carry on the payday
20 loan business as a lender, with the full support of Universal
21 Management Services, Inc.

22 You want me to go to the next one?

23 Q. Briefly summarize it.

24 A. Item 7, tribal employment. It really just says there can
25 be employment opportunities on the reservation for tribal

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Cohen - Direct

1 members.

2 And, finally, termination of agreement. Each party to the
3 agreement will have clearly stated rights to terminate the
4 agreement if they are dissatisfied.

5 Q. Thank you, sir.

6 That was just a letter of intent, is that correct?

7 A. Yes, sir.

8 Q. And did you also, sir, create a plan overview for the
9 Kickapoo Sovereign Lending Corporation?

10 A. I did.

11 MR. ROTH: I'd ask the witness be shown D109, please.

12 Q. That's again a three-page document. You can just flip
13 through that and see if that refreshes your recollection of
14 whether that's a document that you drew up on behalf of Mr.
15 Tucker.

16 A. Well, I can tell you without reading the whole document
17 that it is a document I drew up because that's my handwriting
18 at the upper right that says, "Final sent to Jerry Aday
19 10/9/03." I wrote that.

20 Q. We will come back to who Jerry Aday is in a moment.

21 MR. ROTH: Judge, I ask that that be moved into
22 evidence.

23 THE COURT: Any objection?

24 MR. SCOTTEN: No, your Honor.

25 THE COURT: Received.

1 (Defendants' Exhibit D109 received in evidence)

2 Q. You mentioned before, sir, that Mr. Tucker told you he had
3 consulted with another attorney about this business plan before
4 he came to you, is that correct?

5 A. Yes, sir.

6 Q. Did he ask that attorney the same advice that he was asking
7 you for?

8 A. Well, of course I wasn't present for his initial
9 conversation with her. Her name is Ellen Bachman. I concluded
10 that he asked her for advice because she wrote him a nine-page,
11 single-spaced advice letter, dated in July of '03, and I got a
12 copy of it.

13 Q. Sir, when you were introduced to Ms. Bachman, had you known
14 her previously?

15 A. No.

16 Q. Did Mr. Tucker provide you with anything in regard to
17 Ms. Bachman's professional background?

18 A. He provided me a multipage biography that had the name of
19 her law firm, Preston Gates & Ellis, of Portland, Oregon. It
20 had her photo and it described her specialty in American Indian
21 tribal law.

22 MR. ROTH: I would ask that the witness be shown
23 Defendants' 104, please.

24 Q. Does that look like the bio that was published on her Web
25 site that you viewed in 2003?

1 THE COURT: Sustained as to form.

2 Why don't you rephrase it.

3 Q. Does that refresh your recollection as to the document
4 you're talking about in regard to Ms. Bachman?

5 MR. SCOTTEN: Objection.

6 THE COURT: Sustained.

7 Q. What is that document, sir? Do you recognize it?

8 A. I do.

9 Q. What do you recognize it as, sir?

10 A. It is Ellen Bachman's biography that I looked at in August
11 of 2003.

12 MR. ROTH: I would move that in, your Honor.

13 THE COURT: Any objection?

14 MR. SCOTTEN: I have objection on relevance and
15 hearsay.

16 THE COURT: I will allow it.

17 (Defendants' Exhibit 104 received in evidence)

18 Q. What background of her professional background struck you
19 when you read that, if anything?

20 A. A couple of things. She had a degree with distinction and
21 was a Phi Beta Kappa at Stanford University. She had been with
22 this prominent Portland law firm for 27 years, and had done
23 many transactions involving American Indian tribes, and had
24 written extensively about those matters. And so I believed
25 that she had expertise in tribal law and tribal entities.

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Cohen - Direct

1 Q. In the course of your representation of Mr. Tucker
2 regarding this business venture, did you have conversations
3 with her?

4 A. I had two conversations that I can recall.

5 Q. Did she seem knowledgeable --

6 A. Yes.

7 Q. -- on the subject matter?

8 A. She did.

9 MR. ROTH: We can take that down now, Eli.

10 Q. I think you indicated that Mr. Tucker gave you a letter
11 that she had provided him, is that correct?

12 A. Yes, sir.

13 MR. ROTH: I would ask that the witness be shown D202,
14 please.

15 Q. Take a moment, sir, and if you need the pages turned, we
16 will turn them for you.

17 I will ask you if you recognize that document in front of
18 you.

19 A. I do recognize that. That is --

20 Q. What do you recognize it to be?

21 A. Well, this is the first of nine pages of Ellen Bachman's
22 letter to Mr. Tucker, dated July 28, 2003, on the subject of
23 the tribal partnership enterprise he proposed and her opinion
24 as to how it should be done properly.

25 Q. Did you ultimately render an opinion, a legal opinion,

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Cohen - Direct

1 about the legal viability of the business model to Mr. Tucker?

2 A. I did.

3 Q. Did you use this letter in part to rely on?

4 A. I think this letter was a significant part of the basis for
5 my opinion, but not the entire basis.

6 MR. ROTH: I would move in Defendants' Exhibit 202.

7 MR. SCOTTEN: No objection.

8 THE COURT: Ladies and gentlemen, this testimony is
9 being taken solely as it bears on the willfulness and intent of
10 the defendant Tucker in connection with certain activities
11 taken, and will be explained further in my final instructions.
12 So that's the sole purpose of this testimony.

13 Go ahead.

14 (Defendants' Exhibit 202 received in evidence)

15 Q. Did you do your own independent research in addition to
16 reading this letter?

17 A. Yes.

18 Q. Did Mr. Tucker restrain you, in terms of a budget
19 monetarily, in terms of how many hours you can expend or how
20 much money you can expend on research?

21 A. No.

22 Q. If you would, sir, walk us through your understanding of
23 the headings in this letter and your understanding of the law
24 as it applied.

25 MR. SCOTTEN: Objection. Relevance. I think it

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1 should be what was explained to the defendant.

2 THE COURT: The question here is what this witness
3 told Mr. Tucker. That's the issue.

4 Q. Based on your independent research, sir, and reading this
5 letter, could you summarize the advice that you gave Mr. Tucker
6 in terms of the viability of the tribal lending model that he
7 proposed?

8 A. The bottom-line advice that I gave him is that there was
9 precedent for a non-Indian corporation to partner with an
10 Indian tribe to implement a tribal enterprise, and that that
11 had been deemed lawful by a United States Court of Appeals in
12 1987 in a case involving a national bingo administrator who did
13 work for many tribes. The case's name is *Indian Country USA*.

14 THE COURT: Your testimony is what you said to Mr.
15 Tucker, orally or in writing. Do you understand that?

16 THE WITNESS: I do.

17 THE COURT: Thank you.

18 A. Quite specifically, my advice to Mr. Tucker was, having
19 read Ellen Bachman's letter, having done my own research, and
20 having focused on this Tenth Circuit Court of Appeals case, I
21 told Mr. Tucker that I thought if he followed my advice and
22 Ellen's advice about how to construct the relationship and how
23 to govern himself appropriately, that the arrangement would be
24 lawful.

25 Q. Thank you. We will get back to what, if any, documents you

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1 drafted in connection with this.

2 Did you at a certain time visit the Kickapoo tribe
3 reservation?

4 A. Yes.

5 Q. Who did you go with, sir?

6 A. I went with Mr. Tucker and a gentleman named Jerry Aday.

7 Q. Is that the fellow whose name you wrote on the business
8 plan?

9 A. Yes.

10 Q. Who is Jerry Aday, to your knowledge?

11 A. To my recollection, he was a former Kansas state
12 representative who had relationships with various tribes,
13 including the Kickapoo, and Jerry would be helpful in
14 introducing Mr. Tucker and his business idea to the tribe.

15 Q. Did you drive out with Mr. Aday and Mr. Tucker?

16 A. Mr. Tucker picked me up at my office. We drove to Jerry
17 Aday's home, picked him up, and then drove to the reservation.

18 Q. How far away was the reservation from you, more or less?

19 A. It's a little more than an hour north of Topeka.

20 Q. Did you make a presentation to the tribe at that time with
21 Mr. Tucker's business model?

22 A. Yes.

23 Q. Who was present for the tribe?

24 A. The tribe had a tribal council president whose name is
25 Steve Cadue. He was there with seven or eight other members of

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Cohen - Direct

1 the tribal council.

2 Q. Did the tribe have an attorney at that point?

3 A. We were told -- I was told that they had an attorney named
4 Elsa Smith. She was not at that meeting, but she and I spoke
5 and met personally later.

6 Q. Where did you meet Elsa Smith?

7 A. She came to my office in Leawood, Kansas?

8 Q. Was that part of the negotiation to see whether there could
9 be a so-called meeting of the minds between the tribe and Mr.
10 Tucker's entity?

11 A. Yes.

12 Q. How would you describe the nature of the negotiations?

13 MR. SCOTTEN: Objection. I don't think the defendant
14 is involved in this anywhere, the two lawyers' conversation.

15 MR. ROTH: I am talking about during the presentation,
16 if I wasn't clear. I apologize.

17 THE COURT: Why don't you set the stage, sir.

18 Q. When you were out at the tribe making the presentation to
19 the tribal council, how would you characterize the nature of
20 those negotiations?

21 A. They were friendly. Mr. Cadue had a number of questions
22 about the tribe's responsibilities, what Mr. Tucker was
23 bringing to the relationship, what level of financial
24 commitment he was making, and he was quite interested in
25 knowing if there would be a minimum payment to the tribe on a

1 monthly basis.

2 Q. Would you characterize the negotiations as what we call an
3 arm's-length negotiation?

4 A. Yes. I mean, it was not a deal that had been previously
5 agreed to. The tribe did not tell us that we had a deal when
6 we left the meeting. They said they were going to talk about
7 it and let us know.

8 Q. Did Mr. Tucker, with your assistance, engage another
9 attorney to assist the tribe in the course of this business
10 model?

11 A. He engaged an attorney named Conly Schulte at some point,
12 and I believe that's the lawyer from Omaha who provided some
13 assistance.

14 Q. Did you ever correspond or talk to Mr. Schulte?

15 A. I did have some e-mail exchanges with him and a few
16 telephone calls.

17 Q. What, if anything, was your understanding of the nature of
18 his background?

19 A. I could tell you what he offered to do and what I agreed
20 that he should do.

21 THE COURT: Can you fix a point in time on this, Mr.
22 Roth?

23 Q. This was during the course of the negotiations with the
24 Kickapoo, is that correct? Or had a deal been struck?

25 A. I don't actually remember whether his work was -- well, I

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1 can tell you this.

2 THE COURT: Well, can you answer the question that was
3 asked?

4 A. Would you repeat the question?

5 Q. Was Mr. Schulte brought in to help consummate the deal or
6 before the deal was made, if you recall?

7 A. I recall him being brought in before the deal was signed.

8 Q. Specifically, what services was he brought in to do, if you
9 recall?

10 A. To prepare tribal incorporation documents, including tribal
11 bylaws.

12 Q. Who was paying for that, sir? Who offered to pay for that,
13 if anyone?

14 A. Mr. Tucker offered to pay for that.

15 Q. What did you view Mr. Schulte's relationship to your law
16 firm to be in this project?

17 A. I treated him as a co-counsel. He helped me with my
18 objectives by preparing these tribal organizational documents
19 that were essential to getting the service agreement signed.

20 Q. So you mentioned service agreement, sir. At sometime, did
21 you draft what you just called a service agreement?

22 A. Yes, sir.

23 Q. That service agreement --

24 MR. ROTH: I'd ask that the witness be shown 156B.
25 It's been admitted.

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1 Q. Take a moment and look at that.

2 A. Yeah. I recognize this as the service agreement that I
3 prepared, and it's got Mr. Tucker's signature, or initials,
4 with the date 2/3/2004.

5 Q. On the last page, page 3, do you recognize the signatures
6 there?

7 A. Yes. That's Mr. Tucker's signature, with the date
8 2/3/2004.

9 Q. Who, if anyone, signed for the KLC, Inc.?

10 A. That's the tribal president, Steve Cadue.

11 Q. I would like you to, sir, explain, if you will, first of
12 all, who were the parties to this agreement?

13 A. Kickapoo Lending Corporation is a specifically formed
14 tribal authorized corporation.

15 Q. Who incorporated them?

16 A. Well, I believe Conly Schulte assisted the tribe, but Elsa
17 Smith was also involved in that. And then I was advising
18 Universal Management Services, Inc., a newly formed corporation
19 owned by National Money Service, Scott Tucker's primary lending
20 company.

21 Q. So could you go through, starting at the "now therefore" on
22 the bottom of the first page, the paragraph there, and tell me
23 the significance of why you drew this document as you did.

24 MR. SCOTTEN: Objection, unless there is a connection
25 to the defendant.

1 THE COURT: Try to lay a foundation.

2 Q. You said you incorporated a newly incorporated corporation,
3 Universal Management Services, Inc. Who did you understand was
4 the principal of that corporation?

5 A. Well, that was a subsidiary of National Money Service, Inc.
6 So under Kansas law, National Money Service owned 100 percent
7 of the stock of Universal Management, but on a personal level,
8 National Money was a Tucker-owned entity, and therefore its
9 subsidiary would also be a Tucker-owned entity.

10 Q. So this service agreement, although it's Universal
11 Management Services and the Kickapoo Lending Corporation, for
12 the purposes of this conversation, it's Scott Tucker, is that
13 correct, as the servicer here?

14 A. I would agree that Scott Tucker was the key individual
15 behind the corporate entity, Universal Management Services,
16 Inc.

17 Q. Briefly, sir, without reading everything, let's go to
18 paragraph 1.

19 That indicates that UMS was going to provide the capital
20 for the payday loan business to be administered by them, is
21 that correct?

22 A. Yes. That was a feature discussed in the meeting on the
23 reservation that I previously described.

24 Q. Paragraph 2, UMS was going to furnish for the benefit of
25 KLC their support, equipment, business arrangements to conduct

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1 the payday loan business, including things like advertising and
2 promotion, etc., is that correct?

3 A. Yes. Mr. Tucker already had an office with equipment and
4 personnel in Overland Park, Kansas.

5 Q. What were the tribal duties?

6 A. The tribe was to furnish an office on the reservation and
7 one employee to act as administrator of the loan program, and
8 other employees as were necessary to administer the loan
9 program. So they promised to do all of that. And it sort of
10 may be a little repetitious, but it clearly specifies that the
11 Kickapoo Loan Corporation's office was to be located on the
12 reservation, and that Kickapoo Loan Corporation would cooperate
13 with Universal Management to do whatever was necessary to carry
14 on the payday loan business.

15 Q. Paragraph 4, was the agreement term for a period of five
16 years, but could be canceled on notice, 90 days, by either
17 party?

18 A. That's true.

19 Q. What was the fee arrangement, sir?

20 A. The fee arrangement was a minimum of \$20,000 per month,
21 with a maximum fee of 1 percent of the gross collected revenue
22 of the payday loan operation.

23 Q. Sir, were you involved at all in those financial terms that
24 were negotiated, the fee arrangement?

25 A. I was only involved to communicate to the tribe's attorney

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1 what Mr. Tucker was willing to agree to, and I was told that
2 was acceptable to the tribe so I wrote it in the agreement.

3 Q. Did you have any opinion, express an opinion to Mr. Tucker
4 whether that was an unfair agreement term?

5 A. I don't think he asked my opinion about that. I am pretty
6 sure I didn't offer it. That was an issue that was discussed
7 in my presence with the tribal council, and so my belief was it
8 was not a contested issue.

9 Q. What was the applicable law provision in paragraph 7?

10 A. It was a general statement that the parties would observe
11 all applicable federal and state laws, to the extent they are
12 not deemed unenforceable based upon sovereign immunity.

13 Q. How were the disputes to be resolved?

14 A. They were to be resolved by a referral to the Kickapoo
15 Tribal Court, because as a sovereign nation, they couldn't be
16 compelled to come in to a Kansas state court or a federal
17 court.

18 MR. SCOTTEN: Objection.

19 A. That was my opinion.

20 MR. SCOTTEN: Unless that opinion was expressed to
21 Scott Tucker, in which case I have no objection.

22 THE COURT: Sustained. You can ask a new question.

23 Go ahead.

24 Q. Did you explain to Scott Tucker the concept of sovereign
25 immunity?

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1 A. I had several conversations with Mr. Tucker about sovereign
2 immunity, yes.

3 Q. Can you summarize those conversations with Mr. Tucker, what
4 you conveyed to him?

5 A. They were principally on the point of his work on behalf of
6 a tribal corporation being immune from regulation by Kansas
7 state regulators, such as the Department of Revenue or the bank
8 commissioner, because he would be clothed with the same
9 sovereign immunity that the tribe enjoyed.

10 Q. Did you explain the concept of tribal sovereign immunity as
11 opposed to just sovereign immunity?

12 A. Yes. I told him tribal sovereign immunity had been a
13 concept known in the law for many years. I made reference to
14 Ellen Bachman's opinion letter, and I specifically advised him
15 that being in Kansas, we were governed by the United States
16 Court of Appeals' decisions in the Tenth Circuit, and I
17 specifically referenced my opinion based on the 1987 Tenth
18 Circuit case that I mentioned.

19 Q. In the last paragraph, last sentence in paragraph 7, it
20 indicates that nothing in the agreement was deemed to be a
21 waiver of the Kickapoo tribe's sovereign immunity, is that
22 correct?

23 A. That's correct.

24 Q. Finally, jumping ahead to paragraph 12, there was some
25 indemnification provision there, is that correct?

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1 A. Yes.

2 Q. And UMS agreed to pay, for instance, for services of an
3 attorney to defend any actions that arose from this agreement,
4 is that correct?

5 A. Yes.

6 Q. Was it your intention in drafting this agreement, sir, that
7 the tribe would preserve its sovereign immunity and tribal
8 sovereign immunity?

9 A. Yes.

10 MR. ROTH: We can take that down now.

11 I ask that the witness be shown Defendants' 147.

12 Q. I ask you if you recognize that document, sir.

13 A. Yes. This is the articles of incorporation for KLC, Inc.,
14 also known as Kickapoo Lending Corporation.

15 Q. If you leaf through the pages there, towards the end do you
16 also see the bylaws as well?

17 I'm sorry. I take that back.

18 The last page, which is Bates stamped 400, that is a fax
19 transmittal sheet, is that correct?

20 A. That hasn't come up on the screen yet.

21 Q. It will.

22 While we are waiting for that, is this the document that
23 you indicated that Mr. Conly drafted for the Kickapoos?

24 A. I think you're referring to Conly Schulte.

25 Q. Conly Schulte. I'm sorry.

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1 A. Yes. He is the draftsman of this agreement.

2 Q. So that shows that you sent that to Mr. Tucker, is that
3 correct?

4 A. Well, that is my best recollection that that's why it's
5 connected in the sequence that it is at the end of that
6 document, because I would have faxed that to Mr. Tucker.

7 Q. Just going back to the first page, if we could look at, of
8 that document, paragraph 3.1, it's underlined.

9 If you could read that sentence that starts with "this
10 primary purpose."

11 A. "This primary purpose specifically comprehends that the
12 corporation provide and/or administer short-term loans and cash
13 advance services ('payday loans') and associated services on
14 lands of the Kickapoo Tribe of Kansas."

15 Q. When you received that document, that was signed by tribal
16 members who were the incorporators, is that correct?

17 A. Yes. It was sent to me with the communication that the
18 tribe had adopted this set of articles of incorporation.

19 Q. In connection with setting up the tribal lending
20 corporation, did you cause to have a power of attorney prepared
21 for Mr. Tucker?

22 A. Yes.

23 MR. ROTH: I'd ask that the witness be shown
24 Government Exhibit 202, which has already been admitted.

25 Q. Do you recognize this, sir, as the power of attorney that

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1 you prepared for Mr. Tucker in connection with the Kickapoo
2 Lending Corporation?

3 A. It is the power of attorney that I prepared for the
4 Kickapoo Lending Corporation agreement.

5 Q. Is it fair to say, sir, that gives Mr. Tucker power to open
6 bank accounts on behalf of the Kickapoo Lending Corporation?

7 A. Well, not only to open the account, but to operate the
8 account and to issue checks and to make deposits and to use the
9 account really as though it was his account.

10 Q. Who was the, what we call the donor, who gave that power,
11 who signed that power?

12 A. KLC, Inc., the Kickapoo tribal corporation.

13 Q. Was there a person?

14 MR. ROTH: If you could blow up, Eli, the first
15 sentence.

16 A. Well, that's Steve Cadue, the gentleman that I met at the
17 first meeting I testified about.

18 Q. Was that power of attorney inconsistent with the tribe's
19 ownership of the lending business?

20 A. Not in my opinion.

21 Q. Is that because this power was -- is this power revocable
22 at any time by the donor?

23 A. Yes, because it expressly says in the final paragraph "and
24 may be modified or terminated by verified resolution of the
25 tribe upon notice in writing."

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1 Q. Sometime after the agreement was signed, did you have cause
2 to write Mr. Tucker an actual opinion letter concerning the
3 enterprise that he had formed?

4 A. Yes.

5 Q. Do you recall when that was, sir?

6 A. March 25, 2004.

7 Q. By the way, that was a long time ago. Why do you have the
8 ability to recall the actual date?

9 A. Knowing that these events are 13 to 14 years ago, I have
10 spent about 25 hours in the last month reviewing hundreds of
11 pages of documents, all my time records, and tried to refresh
12 my recollection.

13 Q. Prior to testifying today, sir, did you make yourself
14 available to the government, the U.S. attorneys here, to be
15 interviewed?

16 A. Yes.

17 Q. How many times did they interview you, sir?

18 A. They interviewed me in January of this year for four hours,
19 and they interviewed me Friday for about 45 minutes, and again
20 Sunday morning for 30 minutes.

21 Q. What prompted you, sir, to issue the letter to Mr. Tucker
22 on March 25, 2004?

23 A. Two things. Mr. Tucker asked me to be careful and certain
24 that he was going to be successful in making this tribal
25 arrangement legally compliant. So one was the client's

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1 request. And the second was my own sense of obligation that I
2 wanted him to clearly understand what the requirements were.

3 Q. Did you also in that letter do a draft to a Kansas agency
4 as well?

5 A. The same day I wrote a letter to the Deputy Bank
6 Commissioner, Danny Vopat, of the Kansas Banking Commission.

7 Q. What was the purpose of that letter, sir?

8 A. The purpose, frankly, was to discourage that agency from
9 pursuing a subpoena for records of one or more corporations
10 operated by Mr. Tucker that were involved in tribal lending. I
11 gave Mr. Vopat my opinion that his efforts were really
12 prevented by sovereign immunity, that he could no more get the
13 records of a tribal lending corporation partner than the tribal
14 lending corporation itself.

15 Q. Was that letter successful? Was there any further action
16 in regard to that subpoena?

17 A. I concluded that the letter was successful because the
18 Kansas bank commissioner dropped the matter.

19 Q. In your opinion, the legal opinions that you expressed to
20 Mr. Tucker, did you indicate ways that he could make his model
21 more defensible, if you will?

22 A. Yes. The last page of my opinion refers to five key
23 aspects of his company's behavior that I thought were important
24 to being considered a true agent of a tribal lending
25 enterprise.

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Cohen - Direct

1 Q. By the way, did you consider the Bachman letter to be a
2 blueprint for what criteria had to be met?

3 MR. SCOTTEN: Objection, unless there is communication
4 with the defendant.

5 THE COURT: Sustained. Rephrase it.

6 Q. Did you communicate in your letter that we are talking
7 about, the March letter, to Mr. Tucker that there were any
8 absolute criteria that had to be met for his model to be
9 successful?

10 MR. SCOTTEN: Objection. Relevance. Flipping the
11 standard for advice of counsel.

12 THE COURT: Sustained. Rephrase it.

13 Q. Did you tell Mr. Tucker to discontinue his operation in any
14 way?

15 MR. SCOTTEN: Objection. Relevance.

16 THE COURT: I will allow it.

17 A. No. I never told --

18 THE COURT: You have answered the question.

19 THE WITNESS: I'm sorry, your Honor.

20 THE COURT: You answered the question, right?

21 THE WITNESS: Thank you.

22 THE COURT: Next question.

23 Q. Did you ever advise Mr. Tucker that his business activities
24 with the tribal lending program exposed him to criminal
25 liability?

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Cohen - Cross

1 MR. SCOTTEN: Objection. Relevance. Again, it's
2 flipping the standard.

3 THE COURT: I will allow it.

4 A. No.

5 MR. ROTH: I have no further questions.

6 THE COURT: You may cross-examine.

7 CROSS-EXAMINATION

8 BY MR. SCOTTEN:

9 Q. Good afternoon, Mr. Cohen.

10 A. Good afternoon, sir.

11 Q. How are you?

12 A. Fine. Thank you.

13 Q. We didn't meet in January, did we?

14 A. No. It was another assistant U.S. attorney on the
15 telephone in January.

16 Q. But we spoke on the phone Friday and then briefly again
17 Sunday morning, right?

18 A. That's correct.

19 Q. I think you said this already. Your practice with Scott
20 Tucker was sort of general, you weren't doing one particular
21 thing for him, at least until this payday lending thing began,
22 is that right?

23 A. You are correct.

24 Q. You knew when you started working with him on this Kickapoo
25 matter that he was already involved in payday lending, correct?

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Cohen - Cross

1 A. Yes.

2 Q. You hadn't provided him any advice that that was legal, had
3 you?

4 A. No. I didn't offer him specific advice about the legality
5 of his prior payday lending.

6 Q. You didn't tell him it's legal to charge 700 percent in New
7 York state, did you?

8 A. I did not.

9 Q. You didn't review his loan contracts for the loans he was
10 making in New York state in any way, did you?

11 A. I did not.

12 Q. But you did start working on this Kickapoo matter?

13 A. Yes, sir.

14 Q. I think you testified that a big part of the start was the
15 letter Ellen Bachman wrote?

16 A. I think that was the start.

17 Q. That was addressed to Mr. Tucker, but then he sent it to
18 you also, correct?

19 A. Correct.

20 Q. So let's take a somewhat closer look at that, if we can.

21 MR. SCOTTEN: Can we put up Defendants' Exhibit 202.

22 Q. I don't know if the defendant has handed you a hard copy,
23 but is it fair to say that the first six pages are essentially
24 a summary of the law? We can scroll through it if that helps.

25 A. Yes, I agree with your characterization.

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Cohen - Cross

1 Q. So then it's the sixth page where the letter starts
2 providing advice sort of on how to apply that law, what would
3 be legal applying the general law in the first six pages?

4 A. I agree with that.

5 MR. SCOTTEN: Let's just blow up the first paragraph
6 under "Sovereign Immunity - Consumer Finance Tribal
7 Enterprise."

8 Q. So here we see Ms. Bachman, this letter that Scott Tucker
9 received is explaining sort of how things should be done?

10 A. That is what she is doing, yes.

11 Q. And the second sentence there talks about the goal of the
12 Consumer Finance Tribal Enterprise is to help the tribe?

13 A. That is her opinion.

14 Q. Just to be clear, when we say Consumer Finance Tribal
15 Enterprise, we are talking about something like the Kickapoo
16 Lending Corporation?

17 A. I agree.

18 Q. And the National is Scott Tucker's enterprise, National
19 Money Service or whatever name it was using then?

20 A. That's correct.

21 Q. So you also want to minimize the allegation that the tribe
22 is only acting as a conduit for National, correct?

23 A. That's correct.

24 Q. And conduit is like a pipeline; it shouldn't just be
25 something that passes Scott Tucker's loans through it?

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Cohen - Cross

1 A. Yes.

2 MR. SCOTTEN: So let's go to page 7.

3 We can zoom back out.

4 Can we focus on the first full paragraph.

5 Q. So in this paragraph, it talks about the need to approve a
6 servicing agreement. And we just talked about servicing
7 agreements, right?

8 A. Yes.

9 Q. And it also says -- and this is the sentence beginning
10 "need" -- the tribal enterprise will need to determine the
11 amount of the loans?

12 A. Yes.

13 Q. The payment terms, including interest rates of the loans,
14 correct?

15 A. Yes.

16 Q. It says the tribal corporation will need to make all credit
17 decisions, correct?

18 A. That's what it says.

19 Q. It also says the tribal corporation will need to make all
20 the enforcement decisions, correct?

21 A. That's what it says.

22 Q. And make all the loans -- make the loans, presumably all
23 the loans, not some, right?

24 A. Again, that's what it says.

25 Q. When you say "that's what it says," this was the letter

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Cohen - Cross

1 that Scott Tucker brought to you as, I think you said, the
2 blueprint for what needed to be done if it was going to be done
3 legally, correct?

4 MR. ROTH: Objection. He didn't say blueprint.

5 Q. The plan; this was the advice he brought to you as to how
6 this can be done legally, correct?

7 A. Yes. This was clearly Ms. Bachman's legal opinion.

8 Q. Well, you didn't tell Scott Tucker Ms. Bachman is wrong,
9 did you?

10 A. I did not.

11 Q. To the contrary, you also relied on this in formulating
12 your advice for Mr. Tucker?

13 A. And I have testified that I did rely on it to a great
14 extent, and I did.

15 Q. The last sentence does say that Tucker's enterprise can
16 make recommendations and can do servicing work on the loans?

17 A. That is what it says.

18 Q. The loans for which the tribes determine the amount,
19 payment terms and interest rates, made all credit decisions,
20 made all enforcement decisions, and in fact the loans the tribe
21 made. Tucker can just help by servicing and recommending,
22 correct?

23 A. This is all part of Ms. Bachman's advice, yes.

24 Q. Let us go to the -- I think it was the last full paragraph
25 on this page.

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Cohen - Cross

1 This also talks about the need for the tribe, the tribal
2 corporation to do licensing so that it can review applications
3 and make final credit determinations, correct?

4 A. That's what it says.

5 Q. Let's go to the next paragraph.

6 I want to focus on the last sentence, which is going to
7 lead into the next page.

8 So here it suggests that Scott Tucker should not be the
9 sole source of funds for the loans that are going to be made,
10 correct?

11 A. That is her suggestion, yes.

12 Q. And the reason for that suggestion is it would indicate
13 that the tribal corporation is simply acting as a conduit?

14 A. That was her concern, yes.

15 Q. And you didn't tell Scott Tucker that concern was invalid,
16 did you?

17 A. I did not tell him it was invalid. I did express an
18 opinion also based on my own research.

19 Q. We will come to your opinion letter in a moment.

20 The reason she says for the suggestion is it would destroy
21 the sovereign immunity exemption. So she is warning that if
22 you do this, you may destroy the whole legality here, correct?

23 A. Well, that is certainly the concern she has expressed.

24 Q. Then let's go all the way on page 8 and the second full
25 paragraph.

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Cohen - Cross

1 Here, Ms. Bachman is giving an example of the sort of
2 regulations the tribe might enact, governing interest rates,
3 correct?

4 A. With regard to three specific Indian reservations, the
5 Navajo, Hopi, and Zuni.

6 Q. Unlike much of the rest of the letter, this is just an
7 example?

8 A. It is an example, yes.

9 Q. And the example she was contemplating was 24 percent
10 interest per year?

11 A. Well, she uses it, in my opinion, as an illustration.

12 Q. Is this an opinion that you gave to Scott Tucker?

13 A. I can't tell you that I specifically discussed this Code of
14 Federal Regulation 141.45 that is cited there. I don't
15 remember doing that.

16 Q. So what we know is Scott Tucker, when he saw an example of
17 the contemplated things Ms. Bachman was thinking of, it said 24
18 percent interest; that's what we know?

19 A. Well, sir, when I read this, I read the whole paragraph,
20 which ends, "We have not been able to find any similar
21 Department of the Interior regulations with respect to any
22 other tribes, however."

23 So I believe that I read the entire paragraph, not just
24 part of it.

25 Q. I apologize. And the significance of you reading the

1 entire paragraph?

2 A. I didn't read it to put a 24 percent interest limit on the
3 Kickapoo project because it was not part of the Navajo, Hopi or
4 Zuni reservations.

5 Q. Do you see here where it advises Scott Tucker that he can
6 charge 700 percent interest? It does not, does it?

7 A. It does not.

8 Q. All right. Let us move down to page 9.

9 If we can just look at the conclusion.

10 This conclusion says, in essence, if the things done in
11 this letter are followed, then this should be lawful.

12 It's a summary, but is that a generally accurate
13 summary?

14 A. Yes.

15 MR. SCOTTEN: We can zoom out of this.

16 Q. Now, as an attorney advising Mr. Tucker, you're relying on
17 him generally to know the facts of what is going on on the
18 ground, correct?

19 A. Yes.

20 Q. An attorney, generally speaking, doesn't know the facts;
21 they assess the lawfulness of facts their clients bring to
22 them, right?

23 A. Yes. I think lawyers are always dependent on the client to
24 provide the blueprint, if you will, of the project, and then
25 the lawyer, taking that set of assumptions, renders an opinion.

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Cohen - Cross

1 Q. So, for example, you were dependent on Scott Tucker to
2 inform you of the details of how the loans here would actually
3 be made, correct?

4 A. Yes.

5 Q. And that includes the details of how the bank accounts
6 would work, correct?

7 A. Well, I don't think in this instance Mr. Tucker gave me the
8 fine-point specifics of the bank account arrangements, nor did
9 I ask him to give me those.

10 Q. So Mr. Tucker didn't give you the details of how the bank
11 accounts would work?

12 A. He did not.

13 Q. We talked before about a power of attorney that allowed Mr.
14 Tucker to essentially have access to an account set up by the
15 Kickapoo Lending Corporation, correct?

16 A. Correct.

17 Q. And the purpose behind that was so that Scott Tucker could
18 use that bank account for the benefit of the lending program,
19 correct?

20 A. Yes, sir.

21 Q. That did not mean that Scott Tucker was authorized to use
22 it for his personal expenses, did it?

23 It's a yes or no question.

24 I will rephrase it. Did you advise him that it
25 allowed him to use it for his personal expenses?

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Cohen - Cross

1 A. No, I did not advise him in any regard about that subject.

2 Q. I think we mentioned before Scott Tucker was going to
3 contribute the capital to the Kickapoo Lending Corporation's
4 account, correct?

5 A. Yes.

6 Q. And then the loans were going to be made from that account,
7 correct?

8 A. Yes.

9 Q. So the loans would be deemed made with the tribe's money,
10 although that money had been provided by Scott Tucker, correct?

11 A. Yes.

12 Q. And you certainly did not advise him that he could continue
13 to use that money as his own, for personal expenses and so on,
14 while claiming it all to be the tribe's money, did you?

15 A. I did not.

16 Q. I want to show you what is marked as Defendants' Exhibit
17 121.

18 Do you recognize this?

19 A. I do recognize this.

20 Q. Is it a fax that Scott Tucker sent you?

21 A. Yes. January 30, 2004.

22 MR. SCOTTEN: The government offers Defendants' 121.

23 MR. ROTH: No objection.

24 THE COURT: Received.

25 (Defendants' Exhibit 121 received in evidence)

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1 MR. SCOTTEN: If we can just blow up the very first
2 paragraph of Scott Tucker's text.

3 Q. I would just ask you to read this, sir.

4 A. "Cliff, here is a copy of a resolution and power of
5 attorney to open a bank account to fund the loans for the
6 tribes portfolio. We need this, if we were to get challenged,
7 we can say the loans are funded out of the tribals entities
8 bank account, not mine."

9 MR. SCOTTEN: We can take that down.

10 THE COURT: Ladies and gentlemen, on that note we are
11 going to end for the day. Please do not discuss the case among
12 yourselves or with anyone. We will be back in action tomorrow
13 morning at the usual time for a good 10:00 start.

14 Thank you, ladies and gentlemen. Enjoy the evening.

15 (Jury exits courtroom)

16 (Continued on next page)

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1 THE COURT: Have a very pleasant evening. See you
2 tomorrow.

3 MR. GINSBERG: Your Honor, we have some logistical --

4 THE COURT: Yes, Mr. Ginsberg.

5 MR. GINSBERG: We have some logistical --

6 THE COURT: You can step down.

7 Yes, Mr. Ginsberg.

8 MR. GINSBERG: I wasn't sure what paper you were being
9 handed, but in the last few minutes we were arranging with the
10 marshals, when it became clear Mr. Cohen's testimony wasn't
11 going to be completed, we dealt with that.

12 There are other witnesses, Conly Schulte and Lance
13 Morgan, who are here, and depending on your Honor's ruling, or
14 rulings, regarding the nature of Mr. Schulte's testimony or the
15 scope, and also your ruling as to the subpoena regarding
16 Mr. Muir, we don't know if there is going to be a break and
17 whether those witnesses should stay over, because they may
18 testify tomorrow. Or if there is going to be a break in order
19 to get documents, which could impact specifically Mr. Schulte's
20 testimony, those witnesses wouldn't be able to go on until we
21 had those documents because we are in the middle of this
22 logistic thing. I don't want to speak to the substantive
23 issue.

24 THE COURT: With regard to the advice of counsel
25 defense, I think I have made this plain several times, and I

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1 have a feeling that I am repeating myself, but maybe I am not.

2 Mr. Tucker is free to put on an advice of counsel
3 defense. He can call attorneys who advised him prior to
4 engaging in the conduct alleged in the indictment, his
5 attorneys.

6 MR. GINSBERG: Yes, your Honor.

7 THE COURT: As I said, reading a book on law by a
8 noted professor, or watching an NPR special, or hearing the
9 views of the attorney for another party, and obviously the
10 party who stands on the other side of the transaction, the
11 counterparty, is not advice of counsel. And Mr. Tucker may not
12 offer testimony from a lawyer for the Santee Sioux tribe as to
13 his views of the lawfulness of Mr. Tucker's actions at a point
14 in time when he was not acting as Mr. Tucker's lawyer.

15 Now, that's the general principle that's been teed up
16 by the objection and the ruling. I don't know the facts. If
17 the witness comes in and testifies differently from those
18 proffered facts, proffered by the government and not objected
19 to as a proffer by the defense, then that might be a different
20 story. But if you need me to say the words "that's a ruling,"
21 I say them: That's a ruling.

22 MR. GINSBERG: I understand that, your Honor. I
23 understood that ruling, and I understood that your Honor made
24 the ruling the other day.

25 There is now a second piece to Mr. Schulte's testimony

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1 that was I think discussed earlier today, and that is the issue
2 concerning e-mails and the like that may have gone between
3 Mr. Schulte and Mr. Muir, or either or both were copied on
4 them, and Mr. Muir could conceivably use them when he
5 testifies, but it also would impact potentially on the
6 testimony of Mr. Schulte if he is a party to the e-mail. And
7 the problem we have is that if he is called, and we can't use
8 it until Mr. Muir first testifies about that e-mail, we might
9 then have to recall Mr. Schulte to speak to that same document
10 if we weren't able to do it when he testified the first time.

11 THE COURT: I appreciate that. That's probably what
12 would happen. And this is a product of the timing of the
13 government's application.

14 MR. GINSBERG: If we have to do it that way we will.
15 We will have to deal with the marshals. We have to send him
16 home, bring him back, and pay for it again.

17 THE COURT: And extend the trial, if this is what the
18 government wants. The thing that is apparent to me is this was
19 something the government could have anticipated. So this
20 situation is one they created. I understand and I believe the
21 representation by the government that they just thought of
22 this. I believe them. I don't think they are making that up.
23 But I don't find that a good reason.

24 So the government wants to hack up this trial and
25 delay this trial and prolong this trial, they have to tell me

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1 that's what they want to do.

2 Now, I will give them -- do you want to confer with
3 one another? I will give you a break and we will come back and
4 you will let me know if that's what you want to do.

5 (Continued on next page)

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1 MR. GINSBERG: We appreciate that, so there's clarity
2 and so we can organize what we have to organize.

3 THE COURT: All right. We'll take a ten-minute
4 recess, and the government can decide what it wants to do here.
5 And then I'll decide what my ruling is.

6 MR. GINSBERG: Yes, your Honor.

7 (Recess)

8 THE COURT: Please be seated.

9 Let me hear from the government.

10 MR. VELAMMOOR: Judge, we are, as we have been,
11 concerned about delay in this trial. We want to be respectful
12 of the jury's time, and we believe we have been. At this
13 point, we don't believe our request for documents would result
14 in a delay of any more than a day, but we do think it's
15 important that the government have these documents, whatever
16 limited communications between Mr. Muir and Mr. Schulte. As we
17 understand, at this point, the only party here who does not
18 know the content of those communications is the government, and
19 I think as the Court recognized yesterday from the bench, there
20 is a concern in this trial that these documents will come to
21 light, that the defendant Muir, in his testimony, would have
22 the ability essentially to cherry-pick what he relies on
23 without the full set coming to light for all the parties.

24 This gives us concern. We are sincerely concerned
25 about the jury's time. We understand from Mr. Ginsberg that

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1 there are two additional witnesses in addition to Mr. Cohen who
2 are prepared to testify tomorrow. Since Mr. Schulte has to be
3 aware of these communications, we don't believe that there
4 needs to be a reason or a likely reason for him to be recalled
5 in this case, again, because he's a party to the communications
6 that are at issue.

7 We are obviously open, obviously the Court's schedule
8 controls, to trying to use Thursday as productively as possible
9 to cover things that we may otherwise have covered next week,
10 during the short week. Obviously we defer to the Court on that
11 in terms of the charging conference or otherwise. But
12 obviously we'd be open to using that time as productively as
13 possible, consistent obviously with the schedules of the other
14 parties in the case.

15 We do believe that they're important documents to
16 complete the factual picture, and having come this far, I
17 think, in this trial, it is important that we go forward with
18 those documents.

19 THE COURT: Let me ask, Mr. Bath, when did Mr. Muir
20 first consult with Mr. Schulte?

21 MR. BATH: 2006.

22 THE COURT: At or about the time he went to work for
23 Mr. Tucker.

24 MR. BATH: He went mid-'06, and so I'd say the first
25 90 to 120 days, is my best guess.

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1 THE COURT: All right. I've heard from the
2 government. Let me hear from you on the crime fraud exception.

3 MR. BATH: Your Honor, you're familiar with it. You
4 saw the briefing earlier this year. The law's not any
5 differently, certainly.

6 THE COURT: Yes. We have an opinion in this case on
7 the crime fraud exception.

8 MR. BATH: Right. You have now just application of
9 the facts; I think the government's letter indicated that they
10 believe because there's evidence regarding board meeting
11 minutes and there was some information regarding affidavits.
12 I'd submit to you I don't think they've tied the affidavits to
13 Mr. Muir. They had one witness, when they said, Did Schulte
14 and Muir do it, I think the evidence, documentary evidence, has
15 been Schulte.

16 But at the same time, and I don't want to talk out of
17 both sides of my mouth, if you believe that Schulte was
18 involved and was communicating with Mr. Muir, I'm anticipating
19 this may be the Court's question, I'm not sure that that
20 wouldn't qualify. I don't think they've met their burden, but
21 I don't have the exact universe of facts for you. You've heard
22 the case, but we would oppose that finding.

23 THE COURT: Right.

24 Let me hear from the government.

25 MR. VELAMOOR: Judge, there are obviously different

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1 burdens here, and we do not, for example, need to prove beyond
2 a reasonable doubt that Mr. Muir was a knowing participant in
3 these false affidavits. For example, in order to satisfy our
4 burden on crime fraud, what we need to show merely is that
5 there's probable cause that communications between Mr. Muir and
6 Mr. Schulte were in furtherance of the fraud.

7 THE COURT: When were the affidavits?

8 MR. VELAMoor: The affidavits, according to the
9 evidence in this case, started 2005, extending through 2011.
10 And frankly, that's just one part of it.

11 I mean, frankly, it's been defense counsel who's made
12 clear and has taken numerous opportunities to remind the jury
13 of Mr. Schulte's involvement in all different aspects of this
14 business, from the beginning until the end, and there's no
15 requirement, as the Court knows from its opinion, that we prove
16 for crime fraud that Mr. Schulte was a knowing or culpable
17 participant, merely that he was involved in a crime for which
18 we've established probable cause.

19 THE COURT: Well, no. And that the advice was in
20 furtherance of the fraud, and again, as you correctly point
21 out, not that Mr. Schulte needs to be a knowing participant.

22 MR. VELAMoor: Correct, and I think that given that we
23 provided some examples in our briefing, the affidavits were one
24 example we provided.

25 THE COURT: You mentioned the affidavits began in 2005

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1 and ended in 2011. What happened after Mr. Muir's arrival on
2 the scene?

3 MR. VELAMOOR: To be clear, I think those affidavits
4 even extended -- I'm just standing here recalling, for example,
5 the FTC affidavits in the case as well.

6 THE COURT: I didn't hear what you said. The what
7 affidavits?

8 MR. VELAMOOR: Just standing here --

9 THE COURT: No. I heard that part. The what
10 affidavits?

11 MR. VELAMOOR: FTC affidavits.

12 THE COURT: FTC affidavits.

13 MR. VELAMOOR: Correct.

14 THE COURT: When were they filed?

15 MR. VELAMOOR: FTC affidavits, I think, were filed
16 in -- the case certainly was filed in 2012, so that tells us --

17 THE COURT: OK.

18 MR. VELAMOOR: Right.

19 THE COURT: The case you are trying to make out is
20 that beginning in or about 2006, up through the end of the
21 alleged conspiracy, communications by Mr. Muir with Mr. Schulte
22 were in furtherance of a crime or a fraud.

23 MR. VELAMOOR: Or that there was probable cause to
24 believe that.

25 THE COURT: Right.

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1 MR. VELAMMOOR: Correct.

2 THE COURT: I got it, but telling me what happened in
3 2012 doesn't tell me what happened in 2006.

4 Now, the thought occurs to me that there has been
5 substantial evidence presented from which I can comfortably
6 conclude that there was a crime in progress well before
7 Mr. Muir's arrival on the scene, and that crime was concealing
8 the identity of the lender; and that advice from Mr. Schulte to
9 the Tucker organization, obtained by and through Mr. Muir, but
10 any advice, whether it was Schulte giving it directly to Tucker
11 or giving it to Mr. Muir, was in furtherance of that crime.
12 That's why I don't know what your cherry-picking affidavit's
13 for. I'm lost there.

14 MR. VELAMMOOR: That's what I tried to make clear, one,
15 to give some examples of particular instances that have come up
16 in this trial. We agree absolutely with the proposition the
17 Court just made, that Mr. Muir was essentially the general
18 counsel of the enterprise upon his arrival in 2006; that we've
19 established probable cause that that enterprise was engaged in
20 an ongoing fraud; and that Mr. Schulte was retained and
21 involved in connection with that fraud throughout the time
22 period. We've offered affidavits, board minutes, certain
23 examples, simply to highlight particular things that have come
24 up during the trial to show the ongoing involvement. But we
25 absolutely agree that the request, and nor would the crime

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1 fraud motion be limited to those examples.

2 THE COURT: All right.

3 I'll give you an opportunity, Mr. Bath, if there's
4 anything further you want to say.

5 MR. BATH: No, sir.

6 THE COURT: I conclude that the crime fraud exception
7 applies because there is probable cause to believe that a crime
8 or fraud has been attempted or committed and indeed was
9 attempted or committed before Mr. Muir went to work for the
10 Tucker organization, and it goes back to late 2003, at least;
11 that communications with Mr. Schulte were in furtherance
12 thereof and were intended to enable, facilitate the criminal
13 activity. Based on the evidence at trial, I find that the
14 communications between Mr. Schulte and the Tucker organization,
15 including, but not limited to, communications with Mr. Muir or
16 Mr. Tucker regarding the activities of the payday lending
17 business have lost their privileged character and the exception
18 applies.

19 That's where we are on the crime fraud exception.

20 Yes.

21 MR. GINSBERG: If we're complete with the crime fraud
22 exception, I just want to speak to your Honor in terms of
23 scheduling.

24 THE COURT: Right.

25 MR. GINSBERG: We have Mr. Cohen to complete and then

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1 Mr. Schulte and Mr. Morgan scheduled to testify tomorrow. The
2 only witness we would have after that is Mr. Muir. I don't
3 think that the witnesses we have, besides Mr. Muir, will take
4 us through the whole day tomorrow, and therefore, I think until
5 Mr. Muir can obtain those documents your Honor just ruled upon,
6 Mr. Muir's not going to be -- well, Mr. Bath can speak to that,
7 but I don't think he's going to be in a position to take the
8 stand until those documents have been turned over.

9 THE COURT: Let me inquire of Mr. Bath and have him
10 make a representation on the record of the quantity of these
11 documents. I think I heard hundreds or thousands before.

12 MR. BATH: It will be thousands.

13 THE COURT: Thousands of communications between?

14 MR. BATH: Mr. Schulte and Mr. Muir.

15 THE COURT: All right.

16 MR. BATH: Or where perhaps it could be Mr. Muir
17 talking to another lawyer and Schulte's copied, I sort of
18 include that.

19 THE COURT: Right. I have it.

20 MR. BATH: I think that would be --

21 THE COURT: Covered by the ruling.

22 MR. BATH: Right. I think there are thousands of
23 emails.

24 THE COURT: And included in the ruling are other
25 attorneys at Mr. Schulte's firm.

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1 MR. ROTH: To be clear, Judge, Lance Morgan, who is
2 our other witness who we're talking about, he's a partner,
3 Schulte's partner, so he's right in the mix here.

4 THE COURT: Right, he is. And I read from the emails,
5 there's a Mr. Nyhan also.

6 MR. ROTH: Yes.

7 MR. BATH: And there are other attorneys, but it would
8 be all that firm's lawyers, Judge. The universe has gotten a
9 little bigger, because of the ruling, I respect that, but it
10 would be thousands of emails, and I would look for some
11 direction a little bit to make sure we're all on the same page
12 on the scope. And that is, in the government's pleadings, the
13 papers indicated that the Miami had waived through 3/31/12.
14 However, with the crime fraud finding, I think that's sort of
15 out the window, and it would be any communications.

16 THE COURT: Right.

17 MR. BATH: Same with, it wouldn't just be the Miami
18 tribe. It would be anything.

19 THE COURT: Any tribe.

20 MR. BATH: Any tribe, anything Conly Schulte's on
21 involving payday lending at all.

22 And so there would be thousands. I think it doesn't
23 change our prediction yesterday, five days, including travel,
24 but obviously we'd want those documents before Mr. Muir were to
25 testify. I have not seen those documents. I have not

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1 collected or gathered them at all, prior to the trial -- at
2 all, frankly.

3 THE COURT: And are there any documents in the
4 possession or control of Mr. Tucker of this nature?

5 MR. GINSBERG: Well, the first thing I wanted to raise
6 is that we -- Mr. Tucker's lawyers -- I can't say we've never
7 seen any of these, but we probably have never seen the vast
8 majority of these because there was a privilege asserted on
9 behalf of Mr. Schulte and that firm, because they took the
10 position that UMS had been purchased by the Modocs, and the
11 Modocs never waived their privilege. And so those documents
12 were never turned over to us with other materials when we
13 requested from Mr. Schulte for advice-of-counsel purposes.

14 THE COURT: Never mind Mr. Schulte. Mr. Tucker's
15 employee apparently had them in the ordinary course of his
16 employment.

17 MR. GINSBERG: It was still privileged when we asked
18 for them, and we had no reason to look through all of those
19 documents until this time, and now our job is going to be to
20 look through them as well, because we don't know what impact it
21 may have on Mr. Tucker.

22 THE COURT: Now let me go back to my question. Does
23 Mr. Tucker have any communications with Mr. Schulte that have
24 not been produced?

25 MR. GINSBERG: Mr. Roth has been dealing with Mr.

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1 Schulte, so he's going to have to be the one to answer that.

2 MR. SCOTTEN: I think this might help, unless the
3 defense contradicts me. Because Mr. Tucker was offering an
4 advice-of-counsel defense and had to produce everything, our
5 understanding is the defense has produced to us everything
6 between Mr. Tucker and Mr. Schulte, so I would assume they have
7 had it also.

8 MR. GINSBERG: No, that's not correct. We produced
9 whatever we were given by Mr. Schulte's attorney when we
10 requested it.

11 THE COURT: No. This is a useful conversation.

12 MR. GINSBERG: Yes.

13 THE COURT: The question is whether Mr. Tucker has
14 produced everything in his possession or control relating to
15 the advice received from Mr. Schulte.

16 MR. GINSBERG: Yes.

17 THE COURT: That's the question.

18 MR. GINSBERG: The answer to that is yes, in his
19 possession.

20 THE COURT: Is that correct, Mr. Roth?

21 MR. ROTH: Yes, your Honor. To my knowledge, yes.

22 MS. LIMANI: Yes.

23 MR. GINSBERG: The answer is yes.

24 THE COURT: OK. So now the question is, when is
25 Mr. Ginsberg going to see those emails?

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1 MR. BATH: He'll begin to see them as soon as we get
2 to Kansas City and start to be able to produce those.

3 THE COURT: OK, and that is?

4 MR. GINSBERG: Depends if we're working on Thursday or
5 not.

6 THE COURT: Assuming you're working on Thursday, but
7 you're not working on Friday.

8 MR. BATH: Right. Mr. Muir plans to fly back to
9 Kansas City as soon as he can, as soon as the Court breaks, and
10 he'll begin producing those.

11 THE COURT: Right. And obviously if you're producing
12 them to Mr. Ginsberg, you're producing them to the government
13 at the same time.

14 MR. BATH: Yes, sir.

15 MR. GINSBERG: Was I clear, though, to your Honor,
16 that we don't have witnesses past possibly tomorrow afternoon?
17 Now, we may have other work on Thursday, but I just wanted to
18 make sure I was clear about that.

19 THE COURT: Yes. I don't anticipate that our work on
20 the jury charge is going to take very long, unless I'm missing
21 something.

22 MR. GINSBERG: I don't want to respond to that.

23 THE COURT: OK.

24 MR. GINSBERG: We've been conferring with Ms. Van Ness
25 and she's been sending us material. I don't know that it's

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1 going to take -- we have issues, but I don't know that we're
2 going to have time to do it tomorrow afternoon and then break
3 so Mr. Muir can go back tomorrow night and have the extra day
4 on Thursday.

5 THE COURT: All right. I'll tell you one thing, with
6 regard to the submissions I got late on Friday night --

7 MR. GINSBERG: Yes.

8 THE COURT: -- in some respects, they were exactly
9 what I was looking for, which is identify what in the judge's
10 proposed instructions the defendant wanted to add language to
11 or delete language from or change or thought was wrong or more
12 should be added.

13 MR. GINSBERG: Yes.

14 THE COURT: That's what I was looking for.

15 MR. GINSBERG: Yes.

16 THE COURT: But much of it was very fine legal
17 argument on concepts, and that doesn't help anybody. That was
18 great back when you were submitting your initial proposed
19 instructions, but I think at this stage of the game saying,
20 Well, let me tell you what I think willfulness is, isn't the
21 question. The question is, what words on the page are wrong,
22 what words not on the page should be added? That's what the
23 exercise is, and so I just alert you to that.

24 Now, I think I can help you out. One second, please.

25 I'll try and get you a revised set tomorrow and you

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1 can look at them.

2 MR. GINSBERG: I assisted in drafting that, and I
3 thought we did both things; that is, put the concepts out and
4 then suggest the changes. We probably weren't specific enough
5 to say, We think this should be changed and that should be
6 changed, and we'll do that now.

7 THE COURT: Right. That's what I really need.

8 MR. GINSBERG: OK. We'll do that.

9 THE COURT: That's fine.

10 Yes, Mr. Bath.

11 MR. BATH: As I understand where we are, we'll plan to
12 put Mr. Morgan and Mr. Schulte on tomorrow, but we would still
13 reserve the right to request the Court's permission, perhaps,
14 to recall them after we've looked at these documents.

15 THE COURT: You can. I can't rule on your application
16 to recall until I know more about the facts.

17 MR. BATH: Yes, sir.

18 THE COURT: That I have to honestly say, but that
19 said, you can put on Mr. Cohen and Mr. Morgan and Mr. Schulte,
20 and if there is some prejudice that I see, you'll make an
21 application, a timely application, to recall them.

22 MR. BATH: Thank you.

23 MR. GINSBERG: I don't want to make this Ping-Pong.
24 I'm sorry, but when your Honor raised the word "prejudice," I
25 raised before the idea that we've never seen these emails.

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1 Now, where we are -- that is, Mr. Tucker's lawyers -- is
2 calling Mr. Schulte not having seen any of these emails, so
3 we're sort of putting him on from what we know absent --

4 THE COURT: This is the part that's baffling me,
5 Mr. Ginsberg.

6 MR. GINSBERG: Yes.

7 THE COURT: And I say this just because I'm missing a
8 piece of information here.

9 MR. GINSBERG: Right.

10 THE COURT: I hear from Mr. Bath that Mr. Tucker's
11 employee, his lawyer --

12 MR. GINSBERG: Yes.

13 THE COURT: -- the person who's worked for the Tucker
14 organization since 2006, has thousands of emails from Schulte.
15 You don't need anyone's waiver of anything. These presumably
16 belong to Mr. Tucker. He had a right to see them. He was
17 paying Mr. Muir a paycheck, and he could say "I want to see
18 them."

19 Did he ask for them from Mr. Muir?

20 MR. GINSBERG: I understand what your Honor's saying.

21 THE COURT: No. Did you ask for them from Mr. Muir?

22 MR. GINSBERG: We did not ask for them. It's a
23 complicated situation. The servers which they were on, the
24 Miami tribe apparently had control of them, and we didn't, for
25 some period of time.

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1 I understand your Honor's point. I understand what
2 your Honor's saying. We have to deal with it now as best we
3 can.

4 THE COURT: All right. That's fine.

5 MR. GINSBERG: I understand.

6 THE COURT: But I wanted to get that out there.

7 MR. GINSBERG: Yes, I understand.

8 THE COURT: What else?

9 OK. See you all tomorrow morning.

10 MR. SCOTTEN: Thank you, your Honor.

11 (Adjourned to October 4, 2017, at 10:00 a.m.)
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GOVERNMENT EXHIBITS

Exhibit No. Received

40852114

DEFENDANT EXHIBITS

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27002013

27112020

D8442022

D2718A2032

D8532034

1	D8542037
2	D8552038
3	D8562042
4	D8572044
5	D27292045
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